

PUBLIC TELECOMMUNICATIONS FINANCING
ACT OF 1978

MAY 15 (legislative day, APRIL 24), 1978.—Ordered to be printed :

RECEIVED

Mr. HOLLINGS, from the Committee **MAY 24 1978**
Commerce, submitted the following

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[To accompany S. 2883]

The Committee on Commerce, to which was referred the bill (S. 2883) to amend the Communications Act of 1934 to extend and improve the provisions of such act relating to long-term financing for the Corporation for Public Broadcasting and relating to certain grant programs for public telecommunications, and for other purposes having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

SUMMARY AND PURPOSE

S. 2883, as reported by the Committee, has the following primary purposes:

- (1) To continue and increase long-term advanced Federal funding for noncommercial, educational and cultural radio and television programs of high quality obtained from diverse sources;
- (2) To encourage the growth and development of nonbroadcast telecommunications technologies for the delivery of noncommercial, educational and cultural radio and television programs;
- (3) To assist in the planning and construction of public telecommunications facilities to extend the delivery of noncommercial, educational and cultural programs to as many citizens of the United States as possible by the most efficient and economical means, whether by use of broadcast or nonbroadcast technologies;
- (4) To increase the availability of noncommercial, educational and cultural radio and television programs to minorities and women, and to stimulate new efforts to expand opportunities for

minorities and women in employment, training and operation of public telecommunications facilities;

(5) To clarify the mission of the Corporation for Public Broadcasting (CPB) as a source of assistance for the full development of public telecommunications in which programs of high quality, obtained from diverse sources, will be made available to the public, and to reduce unnecessary overlap of the Corporation's activities with similar activities of other organizations in the field of public broadcasting;

(6) To facilitate access by independent program producers to the public telecommunications program production and distribution system;

(7) To require long-term coordinated planning for future needs in the development of public telecommunications facilities and services by the Department of Commerce and CPB; and

(8) To provide greater accountability to the public by all recipients of Federal funds made available under this Act.

ASSISTANCE FOR PUBLIC TELECOMMUNICATIONS FACILITIES

Title I of the bill, as reported, establishes an authorization of \$40 million for each fiscal year, 1979, 1980, and 1981, to be used by the Secretary of Commerce to assist in the planning and construction of public telecommunications facilities (i.e., apparatus necessary to produce, broadcast, or otherwise distribute noncommercial, educational, and cultural radio and television programs to the public), to extend the delivery of noncommercial educational and cultural radio and television programs. The Secretary is to make planning and construction grants to applicants proposing to build new public telecommunications facilities, or expand the coverage areas or upgrade performance of existing entities. At least 75 percent of the funds for the facilities program must be used for the creation of new entities and expansion of coverage areas of existing entities. The Secretary will make grants (up to 75 percent of the total costs of a project) based upon criteria to assure that the most cost-effective and efficient means of delivery of programs is used (whether broadcast or nonbroadcast), and to stimulate opportunities for operation by minorities and women.

All recipients must keep such adequate financial records and inventories as will facilitate an effective audit by the Department of Commerce and/or the General Accounting Office. The Secretary, in cooperation with CPB and others, will develop a long-range annually updated, facilities plan which will include a 5-year projection of national needs for broadcast facilities, and the expenditures necessary to meet those needs.

TELECOMMUNICATIONS DEMONSTRATIONS

Title II of the bill, as reported, authorizes \$1 million for telecommunications demonstrations in fiscal year 1979, which shall continue to be administered by the Secretary of Health, Education, and Welfare (HEW), to promote the development of nonbroadcast facilities and services for the distribution of health, education and social service information.

CORPORATION FOR PUBLIC BROADCASTING

Title III of the bill, as reported, sets authorization levels for fiscal years 1981, 1982, and 1983, at \$180 million in the first year and at \$200 million in the second and third fiscal years, which sums are to be placed in the Public Broadcasting Fund within the Treasury. The Corporation may draw from this fund on a quarterly basis to meet its obligations for the succeeding quarter in making grants for production acquisition of noncommercial, educational and cultural programs, for interconnection facilities and operations, and for distribution of discretionary funds among public television and radio stations. Eligibility requirements for receipt of Corporation grants or contracts are broadened to include "noncommercial telecommunications entities" (enterprises which perform functions similar to broadcasters by non-broadcast means) and independent program producers.

Added to the list of entities which the Corporation is prohibited under existing law from owning or operating are: interconnection facilities; noncommercial telecommunications entities, and systems and networks of such entities. Further, the Corporation is prohibited from producing programs or scheduling the dissemination of programs to the public.

A provision relating to space satellite interconnection facilities is added to insure that persons other than public stations and entities have access to any available excess capacity on space satellite interconnection facilities or services to distribute program material to public broadcast stations and other public telecommunications entities.

The matching formula by which public radio and television stations earn entitlement to Federal funds through the Corporation is reduced from the present ratio of 2.5:1 to 2.25:1, beginning the fiscal year 1981. The Corporation, in consultation with others, is directed to establish an annual budget according to which it will make grants to, or contracts with, outside entities. Such budget must consist of no less than 95 percent of the annual appropriation. The Corporation may spend no more than 5 percent of its annual appropriation on internal administrative costs, the salaries or related expenses of Corporation personnel and members of the Board, and for the expenses of consultants to the Corporation.

A "sunshine" provision requires that all meetings of the governing boards of the Corporation, any public broadcasting entity, or any public telecommunications entity receiving funds from the Corporation, be open to the public, except under certain specified circumstances.

Provisions are made to encourage and enforce equal employment opportunities (EEO) in public telecommunications. The Secretary of the Department of Health, Education, and Welfare is charged with enforcing compliance with this provision, and the Corporation is directed to supply the Secretary with information to assist the Secretary in carrying out his responsibilities. Each recipient of grants from the Corporation is required to certify to the Corporation that it will comply with the EEO provisions of this bill and the rules of the Secretary prescribed thereunder. Whenever the Secretary makes a final determination that a recipient is in violation of EEO rules, the Corporation must terminate, reduce or suspend further payment of funds.

BACKGROUND AND NEEDS

On October 25, 1977, Senator Magnuson (for himself, Senator Hollings and Senator Pearson), by request, introduced S. 2235 for the administration. A later administration bill, S. 2901, was introduced by Senator Cannon (for himself, Senator Hollings and Senator Pearson), by request, to incorporate amendments to the original administration bill. S. 2235 served as the original proposal before the Committee for its consideration of continued long-term financing for the Corporation for Public Broadcasting and also reauthorization of the grant program for public broadcasting facilities. On April 12, 1978, Senator Hollings (for himself, Senator Cannon and Senator Ford) introduced S. 2883. Concurrently, Congressman Van Deerlin, Chairman of the Subcommittee on Communications, Committee on Interstate and Foreign Commerce in the House of Representatives, introduced an identical companion bill (H.R. 12021). Hearings on S. 2883, as well as S. 2235 and S. 2901, were held on May 3 and 4, 1978. Testifying at the hearings were representatives of the Department of Commerce, the Corporation for Public Broadcasting, individual public radio and television stations and State-wide station networks, national membership organizations of public radio and television, organizations engaged in providing noncommercial educational program services by means of various technologies, consumer and labor spokesmen, small independent producers, and the academic community. The Committee also received written statements, including submissions from the Congressional Black Caucus, the Department of Health, Education and Welfare (Offices of Education and Civil Rights), the Department of Education of the Commonwealth of Massachusetts, the National Education Association, the Association of Radio Reading Services, the Committee to Save KQED, a public broadcasting volunteer, and independent program producers. The Committee has considered all views presented in recommending the legislation herein reported.

PRIOR LEGISLATION

The Congress enacted the Educational Television Facilities Act of 1962 (P.L. 84-447) to assist in the development of noncommercial educational television broadcasting stations throughout the United States through a program of matching grants to establish and expand such broadcasting stations in areas of the country unserved by noncommercial educational television. The Congress in 1967 enacted the Public Broadcasting Act of 1967 (P.L. 90-129), to foster the development of noncommercial public broadcasting responsive to the educational needs of the public and serving as an alternative and supplement to commercial broadcast programming. The 1967 act created the Corporation for Public Broadcasting to provide a nationwide framework for the development of a public broadcasting system, and it continued the facilities grant program, extending its mission to include assistance for noncommercial educational radio facilities. In 1976, Congress extended the facilities program through fiscal year 1977 and established a program administered by the Secretary of Health, Education and Welfare to demonstrate the use of communications for the dissemination of health, education and other public or social service information (P.L. 94-309). In 1975, after a period of time

marked by numerous short-term extensions and continuing resolutions, the Congress instituted a 5-year advance authorization of Federal funding for noncommercial educational television and radio in the Public Broadcasting Financing Act of 1975 (P.L. 94-192).

Further, in September, 1976, as a part of the fiscal year 1977 HEW appropriations act, the Congress established the principle of 2-year advanced appropriations for the funds going to the Corporation for Public Broadcasting (P.L. 94-439). S. 2235, S. 2901 and S. 2883 recognize the fact that although Public Law 94-192 authorized federal funding through fiscal year 1980, the advanced funding principle can be continued only if reauthorization authority is provided in time for fiscal year 1981 funds to be approved in the fiscal year 1979 appropriations legislation. With respect to the facilities program, section 414 of the General Education Provisions Act providing authority for a 1-year extension of any education program, authorized continuing authorization of the facilities program in fiscal year 1978. In order to continue the facilities program in fiscal year 1979 and beyond, new statutory authority must be provided. Accordingly, this Committee is again revisiting the purposes and policies underlying Federal assistance for public telecommunications.

LONG-TERM FEDERAL FUNDING FOR PUBLIC TELECOMMUNICATIONS FACILITIES AND PROGRAMS

This bill continues the present system of multi-year authorizations for activities of the Corporation for Public Broadcasting, and endorses the practice of two-year "forward funding," namely, appropriation of public broadcasting funds 2 years in advance of the year the appropriation is to be spent. This bill reauthorizes the activities of the Corporation and continues the Public Broadcasting Fund for 3 years (fiscal years 1981, 1982 and 1983) and increases funds authorized for these purposes. In fiscal year 1981, a total of \$180 million is authorized, as compared to \$160 million for fiscal year 1980. In fiscal years 1982 and 1983, the authorization ceiling will increase to \$200 million for each year.

Funding for the public telecommunications facilities program is likewise authorized for 3 year in this bill, but since this program is not forward funded, the 3 year period includes fiscal years 1979, 1980, and 1981. By extending this program for the same number of years as the Public Broadcasting Fund, both programs can continue to be reviewed in tandem. For example, the fiscal year 1979 appropriations bill will contain fiscal year 1979 funds for the facilities program and the fiscal year 1981 commitment to the Public Broadcasting Fund. The authorization level for the facilities program will be \$40 million for each of the 3 fiscal years, an increase of \$10 million over prior years.

The Committee believes that the practice of multi-year authorizations established in 1975, combined with forward funding, serves as a valuable mechanism for long-range planning by those charged with planning for the development of, and distributing Federal funds in support of, noncommercial educational and cultural radio and television programming. Likewise this practice lends an important element of stability to those who receive Federal funds. In addition to assisting in the planning process, advance year authorizations and forward funding serve as a necessary insulation from extraneous political and

other inappropriate interference with the operations and programs of individual entities engaged in program development and dissemination.

DEVELOPMENT OF BROADCAST AND NONBROADCAST TECHNOLOGIES

This bill recognizes that public broadcasting can benefit from the technological revolution occurring today in the field of communications. The increased commercial and noncommercial application of various technologies: satellite, coaxial cable, microwave, and translators, as well as advances in the use of audio and video cassettes and discs, and the breakthroughs that are likely in optical fiber and computer memory, if they are planned for and used properly, will create a wealth of new services and greater program choices for the public. It is in the public interest for public broadcasting to make the maximum use practicable of these new technologies. Therefore, this bill provides the mechanisms and incentives necessary to encourage the use of these technologies.

This bill fosters the creation and expansion of all communications media capable of delivering noncommercial educational and cultural radio and television programs to the American public. The bill accomplishes this goal by substituting, where possible, the term "telecommunications" for the term "broadcasting" as it appears in existing law, and by making entities using technologies other than primary radio and television technology eligible for funds contained in the Title I facilities program and in the discretionary funds of the Corporation for Public Broadcasting contained in the Title III Public Broadcasting Fund. At the same time, S. 2883, as reported, continues to strengthen the capability of existing public television and radio stations to provide program services. The primary requirement must be that the entity requesting funds will provide educational and cultural radio and television programs to the public, with important emphasis to areas and populations in the country not presently receiving such service.

Title I of this bill transfers to the Department of Commerce the Educational Broadcasting Facilities Program, now administered by the Department of Health, Education and Welfare under the Educational Broadcasting Facilities Act of 1962. Title I also expands this program to provide federal support for the planning and construction of public telecommunications facilities. This transfer will consolidate telecommunications responsibilities within the Executive Branch, which, pursuant to Reorganization Plan No. 1 of 1977 and the implementing Executive Order 12046, designates the Secretary of Commerce as responsible for development of policy with respect to telecommunications and information matters, principal coordinator of government activities in these areas, as well as the principal advisor to the President on telecommunications and information policy. It is the intention of the Committee that the funds necessary to administer the facilities grant program in Section 102 of S. 2883, as reported, shall be included in the annual appropriation for that section of the Act.

One of the principal purposes of the telecommunications facilities program, as expanded in this bill, is to extend the reach of non-commercial educational and cultural radio and television programs

to a larger percentage of the American population. It is estimated that public radio's signal can be received at home by approximately 60 percent of the public, and, while over 80 percent of the American population falls within the coverage area of public television, only 50 percent receive an acceptable quality signal. Since all taxpayers support public broadcasting, it is imperative that service to unserved or underserved populations be substantially increased. This bill increases service by supporting the construction and planning of new entities and improved performance of existing entities to deliver noncommercial educational and cultural radio and television programs to unserved areas and populations by the most efficient and cost-effective means. Where these radio and television programs can best be provided by a new entity, the facilities program can provide assistance for the creation of such an entity whether it would employ conventional broadcast technology, microwave, cable, translator, or audio or video cassettes or discs, a combination of these technologies, or any other telecommunications technology. Where the signal of an existing public broadcast station may be extended by means of a translator station, an unsponsored channel on a cable system, video and audio cassettes or discs, or by traditional broadcast means (increased power or antenna height, for example), the facilities program can provide funds to either the existing station or another eligible entity. In any case where two technologies compete to serve the same area or population, the most cost-effective technology should be chosen. In order to assure that the major emphasis of the facilities program is placed upon extension or expansion of service, the bill provides that no less than 75 percent of funds in the program be devoted to these dissemination purposes.

At the same time, existing stations must be able to expect a reasonable measure of federal assistance to maintain and improve their facilities. This bill does not abandon or minimize this purpose; rather it recognizes the critical need for funds for both new entrants into public telecommunications and the difficulties which existing public broadcasters face in financing expansion and improvement of their facilities and increases the authorization level to \$40 million.

In fiscal year 1977, \$14 million was spent in facilities grants, approximately \$8 million for expanded coverage (\$6 million in television and \$2 million in radio) and \$6 million in improvements (\$4.2 million in television and \$1.6 million in radio). At \$40 million, this bill assigns \$30 million to expansions and \$10 million to improvements. Assuming the facilities program in this bill is funded at \$24 million or more, which this Committee endorses, the level of spending for equipment improvements can continue to increase from the fiscal year 1977 level. At the same time, with \$24 million or more, important commitments to reach unserved members of the public can be made at an accelerated rate—\$18 million as compared to the \$8 million allocated in fiscal year 1977.

In order to insure an equitable geographic distribution of the funds in this program, S. 2883, as reported, continues the present 8½ percent limitation on grants for facilities in any one State.

Because telecommunications are in a rapidly changing stage, this bill imposes the minimum of qualifications upon entities seeking financial support in order to encourage the greatest degree of experimentation with new delivery technologies. Eligible applicants are any

“public telecommunications entity” which is: (1) a “public broadcast station,” which, as defined under existing law and this bill, includes a television or radio station either licensed or eligible to be licensed by the Federal Communications Commission as a noncommercial educational radio or television broadcast station and owned and operated by a public agency or nonprofit private foundation, corporation or association, or is owned and operated by a municipality and transmits noncommercial educational programs; (2) a “noncommercial telecommunications entity” which is defined as any entity owned and operated by a State, public agency or non-profit private foundation, corporation or association, which has been organized primarily for the purpose of disseminating audio or video educational and cultural programs to the public by means other than a primary television or radio broadcast station; that is, by means other than (1) above; and (3) a system of public telecommunications entities, which means any combination of (1) and/or (2) above.

Broad discretion is given to the Secretary of Commerce to determine how these funds should be allocated among competing applicants. It is not possible at this time to predict precisely the functional characteristics of many of these applicants. The bill does not prevent an entity from proposing to target a specific segment of the public for its programming. For example, an entity proposing to serve the Black community in New York City, the elderly in southern Florida, or the blind in St. Paul may well receive funds from the program. However, no entity regardless of its purpose has any vested right to a grant, and decisions by the Secretary must be based upon the overriding general public interest.

The Secretary has the authority to establish rules, regulations and priorities for the funds. As stated earlier, it is of the highest priority, with respect to 75 percent of the funds in this program, that basic public educational and cultural service, namely audio and video television and radio programs, disseminated by means of any appropriate telecommunications technology, be extended to all population areas of the country. It is another matter of priority, with respect to approximately 25 percent of the program funds, that existing entities be adequately maintained and improved. As to each of these two priorities, it is the Committee's intention that neither public radio nor instructional programming be treated as less important because of enactment of this bill. As discussed later herein, public radio is an important resource and should continue to receive requisite attention and funding.

As to instructional television, the role of television in classroom education is as important now as it was when Congress enacted the Public Broadcasting Act of 1967. When the Congress authorized the Corporation to contract with or make grants to program production entities, individuals, and selected noncommercial educational broadcast stations for the production of programs for national or regional distribution, it expected those programs to be available for use in the classroom and on closed circuit television systems serving classroom instruction. The Committee expects the Corporation to continue to make programs supported by the Corporation available for use in the classroom.

In 1967, the development of new technologies raised important questions about the role of broadcast stations in electronic instruction. While a study of instructional broadcasting mandated by the act was completed, neither the Department of Health, Education and Welfare nor the Corporation has taken the lead in insuring that educational and cultural programs are delivered for instructional use by the most cost effective and resource-efficient means.

The Committee expects the Department of Commerce, which will assume responsibility for the facilities program with the broadened power to compare the advantages of alternate technologies on the basis of costs and benefits, and the extension of eligibility for facility grants to public telecommunications entities, in coordination with HEW and the Corporation, to evaluate the use of nonbroadcast means (such as Instructional Television Fixed Service or point-to-point transmission, cable, translator, video cassettes and video discs) in the delivery of educational and cultural programs to the classroom. Completion of that evaluation will provide guidance to the Departments of Commerce and HEW and to the Corporation in fulfilling their responsibilities.

Only after the aforementioned priorities have been addressed does the Committee believe that the Secretary of Commerce give serious consideration to extending support to entities proposing to serve specific interests within the public at large. Even then these specific interests must closely fit with the general purposes and objectives of public broadcasting.

Proper management of this program will require skill and imagination. The Secretary must be at once innovative and cautious, giving due consideration to new ideas, but not expending limited resources on fruitless experiments while ignoring the needs of existing public telecommunications entities.

As a possible method of reducing equipment costs, the Secretary should consider the viability of consolidated purchases by various applicants who are seeking assistance from this program to obtain the same equipment. This Committee has every confidence in the Secretary's ability to administer this program properly. In addition, the Committee intends closely to monitor the evolution of the program to insure that it is consistent with the Committee's intent.

UHF PARITY AND NONCOMMERCIAL EDUCATIONAL FM RADIO

With respect to TV reception, two-thirds of the public television stations operate on the UHF band. It is commonly agreed that it is more difficult for potential viewers to receive UHF signals. This can be due to a number of factors, some of which vary from location to location. One significant factor is the noise level figure (a measure of television receiver performance) presently set as 18 decibels. The Federal Communications Commission has the authority to lower this figure and is currently considering proposals to accomplish this end. The Committee believes that the technology is readily available, at a small cost to the consumer, to lower the present noise figure substantially. The Committee expects the Commission to act in the near future with a view toward improving the competitive performance

characteristics of UHF television vis-a-vis VHF television, and particularly toward reducing the noise levels. To the extent that FCC rules result in incomplete exploitation of the potential of UHF television, the effectiveness of federal dollars appropriated to support existing and new public television UHF stations is reduced. The Committee intends to pay close attention to imminent developments at the Commission in the area of UHF/VHF parity.

The Federal Communications Commission will play a significant part in public radio's future as well. In the near future, the Commission will take action on a long-pending rulemaking docket (20735) which involves, among other matters, development of a Table of Allocations for noncommercial educational FM radio similar to the Table already in place for commercial FM broadcasting. The Committee is hopeful that the Commission will move expeditiously toward bringing more orderly development to the FM channels set aside exclusively for non-commercial educational FM. With the parallel efforts of the Commission and the Secretary of Commerce, long-range projections for public radio facilities can be planned carefully and intelligently and appropriate levels of funding for public radio facilities needs can be determined accordingly.

SUPPORT FOR PUBLIC RADIO

Certain witnesses at the Subcommittee's hearings on S. 2883 recommended that a specific set aside or "catch up" fund be provided in Title I of the bill for public radio. The Committee does not believe that a specific set-aside or special fund for radio facilities is appropriate or necessary at this time. However, the Committee does recognize the unique and important role of public radio. Further, the Committee recognizes that in prior years public radio has not received facilities grants that compare to radio's needs. That situation has changed recently. For example, in fiscal year 1977, public radio received approximately \$3.68 million as compared to television's \$10.31 million. This meant that radio received 26.3 percent of the \$14 million spent. The fiscal year 1977 grants represented a 76 percent increase over fiscal year 1976 and a 156 percent increase over fiscal year 1975. The Committee has every confidence that the Secretary of Commerce will recognize these facts, and will take steps to insure that the needs of public radio continue to be addressed. It is expected that, under the new program contained in this bill, public radio will continue to be able to receive the funds it needs to improve equipment and to reach unserved members of the public.

INCREASED MINORITY AND WOMEN'S INVOLVEMENT

An additional basic objective of the telecommunications facilities program as modified in S. 2883, as reported, is to increase non-commercial, educational and cultural radio and television service to, and involvement by, minorities and women. This goal is fostered by affording special consideration to minority and female applicants for facilities grants, and by requiring the Secretary of Commerce to take affirmative steps to inform minorities and women of the availability of funds and the localities where new public telecommunications entities are needed. The Committee believes that a national, federally

supported system of public broadcasting must be responsive to the needs and interests of all segments of the population, especially to the needs and the interests of disadvantaged groups and minority populations.

Financial assistance provided for under Title I shall be granted and administered consistent with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, *et seq.*

The term "minority," as used in this bill, is intended to include: American Indians, or Alaskan Native; Asian or Pacific Islander; Hispanic; and Blacks, not of Hispanic Origin. These designations are consistent with the recommendations of the Office of Management and Budget's Ad Hoc Committee on Race/Ethnic Categories and Department of Justice regulations, 28 CFR § 42.402(e).

Assuming they meet the other appropriate application criteria as set forth in the bill, Indian tribes are eligible to receive facilities money from the Secretary of Commerce. They may do so either as a political subdivision of a State where the tribe is recognized as such or through the establishment by the tribe of a nonprofit foundation, corporation, institution, or association organized primarily for educational or cultural purposes. In the past, the Secretary of HEW has provided facilities money to eligible Indian tribe organizations, and the Committee expects the opportunity for such funding to continue under the program administered by the Secretary of Commerce.

ADDITIONAL RESPONSIBILITIES OF THE SECRETARY OF COMMERCE

Important additional responsibilities for the Secretary of Commerce have been added in administering the telecommunications facilities program.

Section 393 of the Communications Act of 1934, as amended, requires that each recipient of assistance under the facilities program maintain records to assist effective auditing and accountability for the disposition of funds received under that program. Under S. 2883, as reported, this requirement is continued and expanded to include a requirement that recipients maintain a complete and itemized inventory of all telecommunications facilities under the control of the recipients.

It has come to the attention of the Committee that some recipients of assistance, either from the facilities program or from the Corporation for Public Broadcasting, do not maintain adequate information concerning their equipment. Accordingly assistance has been awarded to applicants with insufficient knowledge of real need for equipment or whether equipment in the possession of applicants is being used efficiently. Without knowledge of an applicant's existing inventory of equipment and apparatus, the Secretary would be unable to insure that a grant is justified.

According to testimony of Mr. Henry Loomis, President of the Corporation for Public Broadcasting, approximately ten percent of the community service grants to the stations are used to purchase equipment. However, CPB does not require these stations to maintain an inventory of equipment. Nor does it generally evaluate the effectiveness of inventory controls where they do exist. Further, in those few instances where such evaluations have been made, CPB admitted that "inventory controls have been generally lacking." Such a lax

attitude toward accounting for equipment can lead to abuse and duplication, which unnecessarily add to production costs and result in reduced effectiveness of Federal funds spent for facilities.

It is essential, therefore, that mechanisms be set in place to assure that Federal funds for facilities equipment and apparatus are properly spent and accounted. As the Secretary of Commerce is mandated under S. 2883, as reported, to administer the Federal facilities program, it is appropriate that the Secretary be charged with the additional duty of assuring that applicants be able to justify their equipment needs and to account for the proper disposition of facilities assistance for such needs.

Further, CPB indicated that it was "customary" for producing stations to charge to production costs depreciation on equipment purchased with federal funds. Because CPB grants are in many instances used to finance production, this practice has the effect of charging the same equipment costs twice to the same Federal appropriations source. Although Federal fiscal requirements do not apply to CPB, the Committee encourages CPB to follow the spirit of the Office of Education's rules which require that depreciation allowance exclude the costs of any portion of the buildings and equipment donated or borne directly or indirectly by the Federal Government through charges to Federal grant programs or otherwise.

Allegations were brought to the Committee's attention concerning the underutilization of production equipment purchased with Federal funds at various stations. The Committee views such underutilization as a serious problem and expects that the Department of Commerce will show greater vigilance on this matter than the Department of HEW has demonstrated in the past. The improved inventory controls contained in S. 2883, as reported, will provide further protection against "goldplating" of station facilities in the future. The Committee also expects that CPB will require that a similar inventory will be maintained by stations that use community service grants to purchase facilities.

Several other provisions of S. 2883, as reported, assure efficient and cost effective use of Federal support of telecommunications facilities. Each applicant must satisfy the Secretary that comprehensive local planning, including an evaluation of alternate technologies, has been undertaken prior to the filing of an application. Applicants must also submit long-range plans for future facilities requirements, thereby compelling applicants to consider equipment and apparatus needs beyond present requirements and assisting the Secretary in determining that applicants will make efficient long-term use of any grant.

Additionally, the Secretary is directed to prepare annually a comprehensive and detailed inventory of all Federal funds distributed to public telecommunications agencies. In addition to serving a general informational purpose of use to the Congress and the public on the extent of total Federal support of public telecommunications, this information will be of assistance to the Secretary in making individual facilities grants.

Finally, the Secretary of Commerce is charged with developing a long-range plan to accomplish the goals set forth by Congress in the telecommunications facilities program. In consultation with the Corporation and other appropriate parties, the Secretary is to project national needs for public telecommunications and the facilities required

to meet those needs. With this information Congress will be in a position to make more informed judgments as to the appropriate levels of future authorizations for the telecommunications facilities program. Further, the Secretary will be in a better position to determine relative priorities between the applicants for grants when a national projection poll has been taken.

PUBLIC BROADCASTING GENERALLY

In addition to the challenge presented to all communications entities by new technological advances, the public broadcasting community is itself at a crossroads. When it enacted the Public Broadcasting Act of 1967, the Congress determined that Federal support for providing noncommercial educational programs to the public was in the public interest. Over the years, Federal funds have constituted an important, basic grant for public broadcasting, which when combined with funds from other governmental and private sources have produced a respectable level of performance. However, public broadcasting has not yet reached its potential.

Now is the time for public broadcasting to "get its house in order" so that it can achieve the prominence envisioned for it in 1967. Many of the provisions contained in Title III of S. 2883, as reported, are intended to assist the public broadcast community in accomplishing this goal. The purpose is to assist, not to indict.

The "heat shield" purpose of CPB, which is designed to protect public broadcasting from extraneous political interference, is intended to prevent interference with program selection and content. It is not the purpose of S. 2883, as reported, to pierce that shield, and this Committee makes no comments or judgments regarding programs. Rather, the Committee finds that the existing Public Broadcasting Act does not adequately address matters of financial management, openness and accessibility to the public. The Congress and the public it represents do have the right and the responsibility to insure that the public's funds, whether contributed or appropriated, are spent in a responsible manner.

The Committee believes that public broadcasting should be more accessible and responsive to the general public, to minorities, to women, to special interest groups and to small independent producers; it should maintain records clearly indicating the receipt and disbursement of all funds; it should minimize overhead expenses and maximize use of their resources for the creation of new programs. The Committee believes that S. 2883, as reported, provides public broadcasting with the tools to achieve these objectives by providing for open meetings, financial record keeping, equal employment opportunity enforcement, and access to satellite interconnection.

At the same time, S. 2883 continues the principle of multiple year authorizations, which, as noted earlier, the Committee believes serves as an important insulation from external program interference.

Excellence in public broadcasting will be realized only when significantly higher levels of funding are made available, on a consistent basis. The Committee expects that, by the time the authorization contained in this bill expires, these objectives of accountability, openness, and accessibility will have been achieved, and that the Congress will be prepared to provide the increased support and stability necessary to realize that excellence.

THE MATCHING PRINCIPLE

The matching principle was established by the 1975 Public Broadcasting Financing Act. It is based on the theory that the amount of nonfederal money raised from a myriad of sources provides the most reliable measure of effectiveness of public broadcasting in meeting the diverse needs of its many different audiences.

The sum of nonfederal money is calculated as a composite figure in the hope that it cannot be manipulated by any one entity or group. By establishing the ratio of the match, Congress is able to determine the general level of the Federal appropriations within the sums authorized and more importantly, it determines the share of the total that is appropriate for the Federal Government.

The 2½-to-1 ratio established in 1975 was appropriate in the initial stages of the matching program, but the 1979 appropriation is approximately \$18 million below the earnings of public broadcasting at the 2½-to-1 ratio. The Committee finds the argument made by Mr. Henry Loomis persuasive:

Too low a ceiling acts like an ordinary appropriation. It is determined by the judgment of the Congress, rather than by the sum of the nonfederal income earned. It seriously impairs the insulation, incentive and predictability of the federal funds.

Therefore, the Committee is recommending that the ratio be changed to 2¼ to 1, to allow a greater degree of Federal assistance consonant with funds raised, yet not so high as to permit such assistance to become a dominant source of support for public broadcasting.

DISBURSEMENT OF FEDERAL FUNDS TO THE CORPORATION

Under current practice, the Corporation receives its appropriation from the "Public Broadcasting Fund" within the Treasury on a lump-sum basis.

While receiving its appropriations in lump sums at the beginning of the fiscal year, the Corporation distributes funds to its grantees periodically. For example, CPB provides community service grants to stations twice yearly. Production grants are generally provided in three or four installments. Cash in excess of CPB's immediate needs is largely invested in securities backed by the Federal Government. The Committee is concerned that this investment practice, although entirely legitimate, has resulted in earning by the Corporation of interest income on funds in excess of immediate cash needs. The effect of this practice is to supplement the appropriation to the Public Broadcasting Fund, and to increase the borrowing costs of the Treasury. Without intending in any way to disparage the prudent business practices of the Corporation, or to suggest that the Department of the Treasury should in any fashion exercise review powers over the amounts withdrawn from the Fund by the Corporation, it is the view of the Committee that a more orderly, yet flexible, system of disbursement of these funds is necessary to assure proper management of Federally appropriated funds. Accordingly, S. 2883, as reported, provides that the Corporation may withdraw funds from the Fund on a quarterly basis to meet its cash needs for the succeeding quarter. Section 306 of the bill directs the Secretary of the Treasury to disburse to the

Corporation such amounts as the Corporation estimates to be its spending requirements for the next three months. Under no circumstances should the Secretary of the Treasury review, disapprove, or modify the amount certified by the Corporation.

FINANCIAL MANAGEMENT AND ACCOUNTABILITY OF CPB RECIPIENTS

The record on the business practices of public broadcasting entities receiving financial assistance overwhelmingly demonstrates the need for reform. Evidence of inadequate audits and other financial operating deficiencies was adduced at the hearing and confirmed in written submissions from CPB, PBS, and NPR.

CPB has the statutory authority to audit its grant recipients. The Corporation completed 114 such audits in fiscal year 1977; its objective is to audit each of the present 359 community service grantees at least once every 3 years. However, according to testimony, 25 percent of public television and radio stations have never been audited. In those instances in fiscal year 1977 where audits did occur, 44 percent were classified as having "serious"¹ deficiencies. In fiscal year 1976, 46 percent were classified as serious.

In view of this substantial number of serious findings, the Committee emphasizes the need for CPB to require prompt, corrective action by the entities involved.

In addition, CPB performed no audits on its agreements with PBS or NPR until 1975. The audits performed in 1975 and subsequently, by the Corporation's own admission, have been "limited". GAO has performed no full-scale audit of PBS or NPR since 1967. In fiscal year 1977, CPB provided approximately \$15.1 million and \$7.7 million to PBS and NPR, respectively. The Committee believes that the magnitude of CPB funds available to PBS and NPR, and the general discretion provided in CPB grants to both organizations, make annual audits of both, by either CPB or GAO, imperative.

CPB presently devotes only .3 percent of its total appropriations to auditing functions. The Corporation has recognized the need to increase its audit staff in order to obtain its goal of auditing all of its grantees during every 3-year period. In fiscal year 1979, CPB will have 15 members on its audit staff. This may insure more prompt audits which CPB President Henry Loomis described in his testimony as a "teaching affair", rather than an adversary proceeding. The Committee urges the Corporation to continue strengthen its effort in this area and will follow the results closely.

Further, there is no uniformity in accounting standards used by public broadcasting stations, CPB, PBS or NPR. As a result, it is difficult to draw comparisons or in any way correlate and aggregate financial information. In addition, funds from all sources are comingled by the recipient, making it difficult to obtain a complete picture as to the operating costs of the recipient.

S. 2882, as reported, recognizes the need for more effective audit and accounting procedures. It requires GAO, in consultation with CPB and others, to develop accounting principles that will be used uniformly by public telecommunications entities. These principles should

¹ CPB defines "serious" to mean those audits where material discrepancies were determined. These findings impact upon (1) CPB accountability for its funds distributed; (2) nonfederal financial support certified to Treasury and used in CSG determination; (3) CPB fund recipient's failure to meet grant/contract requirements.

insure that all funds received and expended by such entities are properly accounted for and that all such entities will similarly categorize various comparable receipts and expenditures. In developing these accounting principles, the GAO should, to the maximum extent practicable, insure that governmental, university and college licensees, which have established financial reporting systems, will not be burdened with an unwarranted duplication of record-keeping requirements. The bill requires public telecommunications entities to undergo an annual audit by independent auditors in addition to maintaining and strengthening GAO's and CPB's present audit authority. It is contemplated that where an entity is audited by a State agency, such audits would qualify as an annual audit by an independent auditor. It permits GAO to audit all financial information that relates to public telecommunications purposes "including all funds received by such entities from any private or governmental source, and all funds expended for any purpose. . . ." This language will permit a comprehensive review of the financial operations of these recipients.

Due to the inadequate performance of CPB, the lack of uniform principles and the numerous problem areas cited during the hearings, this Committee feels such a review is imperative at this time in order that the Congress and the public can be assured that its funds are spent in a responsible and efficient manner.

These provisions are not intended to authorize either GAO or CPB to review or otherwise pass upon judgments relating to program content.

Because of the sensitivity this Committee has with respect to improper interference into the affairs of any media, it is appropriate to state that neither these financial management and audit provisions nor any other provisions of this bill are intended to have, nor have, the effect of permitting any governmental interference with program content or selection.

FEDERAL FUNDING FOR NONCOMMERCIAL, EDUCATIONAL AND CULTURAL RADIO AND TELEVISION PROGRAMS

Under the Public Broadcasting Act of 1967, the Congress determined that Federal financial assistance to public broadcasting should be provided through creation of a private, non-profit corporation, which would not be an agency of the Federal Government. The Corporation for Public Broadcasting was created to receive public and private funds and to distribute those funds to other entities for the production, acquisition and dissemination to the public of non-commercial, educational television and radio programs. The Corporation was made accountable to the Congress and the American public for the expenditure of public funds appropriated to CPB for the purposes set forth in the Public Broadcasting Act.

One of the key issues before the Committee in considering S. 2883 is the proper role of the Corporation in program production, acquisition and distribution. If central concern to the Committee is the inter-relationship between the Corporation, National Public Radio, the Public Broadcasting Service, local licensees, and independent program producers in the process of program production. Several problems in this regard were raised in the course of the Subcommittee's hearings.

Effective funding of program production is the paramount function of the Corporation. The greatest source of friction between CPB and PBS involves the propriety of CPB involvement in the individual program development and selection process. The Committee is advised that the Corporation recently has undertaken a thorough review of its television program funding procedures, in consultation with PBS and other parties, with a view toward reducing or simplifying those procedures. The Committee welcomes the initiative of the Corporation and will continue to monitor its progress toward reducing excessive involvement in specific program details better undertaken by entities outside the Corporation.

The Public Broadcasting Act of 1967 makes clear that CPB's program support and distribution activities are solely for the purpose of making programs available to public broadcast stations, if they choose to use them, at times chosen by the stations. S. 2883 as reported, reaffirms and clarifies the intent of Congress expressed in the 1967 Act that the Corporation is to facilitate "the full development of public telecommunications in which programs of high quality, obtained from diverse sources, will be made available to" stations and other entities disseminating noncommercial educational and cultural programs to the public at large. In testifying before the Subcommittee, Mr. Loomis reiterated the guiding principles of the Board of Directors of the Corporation in program production: "fair and open access to public broadcasting for stations and independent producers alike; encouragement of innovative and creative programs; and procedures that are simple, flexible, diverse and meet the needs of the unserved groups in our society." The Committee shall hold the Corporation accountable to these principles.

The Committee resisted the suggestion that CPB should be statutorily limited to block grants as a method of restricting CPB involvement in program activities. The Committee does not believe that the block grant mechanism would achieve this suggested purpose. Furthermore, improved financial management is a primary objective of this bill.

The block grant mechanism could prevent CPB's exercise of appropriate financial management supervision, thus frustrating that primary objective.

FIVE-PERCENT OVERHEAD CEILING

At the present time, according to CPB figures, 18.8 percent of the total, and 44 percent of the discretionary funds available to CPB go to program production. In order to encourage additional funds for this purpose and to discourage a growing bureaucracy at CPB and elsewhere, S. 2883, as reported, places a ceiling on CPB overhead expenses, beginning in fiscal year 1981. In that year CPB overhead may not exceed 5 percent of the federal funds appropriated and matched by private contributions. In subsequent years, the cap will be 105 percent of the overhead ceiling available in the prior year. It is the Committee's expectation that other public telecommunications entities and their membership organizations will make every effort to limit their administrative costs as well.

SMALL INDEPENDENT PRODUCERS

The hearing record is replete with criticisms that public broadcasting is not open to the work of independent producers. Because the Committee does not believe it is possible to legislate creativity, the Committee resisted the notion of a specific set aside for independent producers or national programming. However, small producers deserve a more open marketplace for their product. It must be an important goal of public broadcasting to foster and support American talent and creativity. Accordingly, the Committee urges public broadcast stations to review their program selection practices to insure that they are encouraging to new talent. In addition, the sunshine provisions of S. 2883, as reported, should assist independent producers, as it will increase their information on, and understanding of, the individual public telecommunications entities and their membership organizations.

ACCESS TO THE SATELLITE INTERCONNECTION SYSTEM

The Corporation has contracted for the construction of a satellite interconnection system for public television. The system is presently designed to serve public television stations in the continental United States, Puerto Rico, and the Virgin Islands. It will consist of leased satellite transponders (transmitting devices); a main origination terminal (all programs will be transmitted to the satellite from this terminal) just outside of Washington, D.C.; four (later five) regional transmit-receive terminals within the continental United States, and 148 receive only-earth terminals. Also, the facilities at the PBS Technical Center in Washington, D.C., will be adapted for use in the system.

The construction and related project administration costs are budgeted at approximately \$39.5 million through fiscal year 1979, the system's expected completion date. These costs will be funded by a \$1.3 million grant from the Ford Foundation, \$.6 million from PBS, \$3.3 million from PBS member stations, and \$34.3 million from CPB. CPB planned to finance the \$34.3 million in part with its appropriated funds and in part under a revolving line of credit with a syndicate of commercial lenders. As of September 30, 1977, CPB had spent \$7.3 million of its appropriated funds.

It is anticipated that public radio will soon be entering the satellite age as well.

Because of the important opportunity made possible by satellite technology, the Committee believes it is necessary to establish standards for access. While leaving the underlying terms and conditions to be set by the involved public telecommunications entities, S. 2883, as reported, provides that no public telecommunications entity may be denied reasonable access to satellite interconnection facilities and services, such as the ability to send and receive programs.

To the extent that any capacity remains after the needs of public telecommunications entities have been met, other persons shall have access for the purpose of distributing noncommercial educational and cultural programs and program information to public telecommunications entities. The Committee hopes that this provision will afford an added measure of access assistance to small independent producers

who are seeking to solicit financial backing for a planned program or offers to afford any person, not qualifying as a public telecommunications entity, to disseminate programs directly to the public, or to require any public telecommunications entity to disseminate to the public any program if such entity does not wish to do so. Nor is the provision intended to limit the ability of the managers of the satellite interconnection and local public telecommunication entities to maintain reasonable content requirements regarding taste and propriety. In making excess channel capacity available to persons other than public telecommunications entities, the entity or entities engaged in allocating access to the interconnection facilities and services shall not be considered to be acting as a common carrier.

The Committee expects that the satellite interconnection facilities will be made available to entities and persons on an equitable geographic basis and that time zone differentials will not work to the detriment of those seeking to use the facilities in such areas as Alaska and Hawaii.

ARCHIVES

The 1976 Public Broadcasting Act provided the Corporation with authority to establish or support libraries and archives of broadcast material and disseminate information about noncommercial broadcasting by the publication of a journal. The Congress intended to make public broadcasting programs and materials available for distribution for educational uses. The Corporation has not established an archive but does provide financial support for the preservation and storage of about 28,000 hours of public television programs maintained in two principal locations; Ann Arbor, Mich. and Springfield, Va.

Although CPB and NPR have agreed to supply limited material to the Museum of Broadcasting, a private nonprofit museum in New York City, the Corporation has not been successful in creating a mechanism for disseminating these programs to the stations for use in developing their program schedules nor has the Corporation made the programs accessible to the public. Because of the additional resources authorized by this bill, the Committee expects the Corporation to pursue the original purpose of this subsection and make the educational and cultural programs presently in storage as well as the programs broadcast in the future available to the stations. This will be an important source of programming material particularly in view of the additional capacity available through the satellite interconnection.

In addition, the Committee has adopted an amendment to this subsection to allow the Corporation to "contribute" appropriate program material to the American Television and Radio Archive established in the Library of Congress by the General Revision of the Copyright Act of 1976 for the purpose of preserving our nation's television and radio heritage and making it accessible to the public.

THE PUBLIC BROADCASTING SERVICE (PBS)

The Public Broadcasting Service (PBS) is a membership organization, composed of the majority of noncommercial educational television station licensees. PBS is independent of CPB, and represents the needs and interests of its members before the Congress, administrative agencies and CPB, and provides other services desired by its

members. As the term is generally used, PBS, is a "trade association," accountable only to the majority will of its member stations, through a board of 52 members, and through a number of committees composed of member representatives.

But, for historical reasons, PBS is more than a trade association; it is the manager of the only national public television distribution system in the Nation, the "lifeline" to local public television stations. At present, PBS manages a terrestrial interconnection system owned and operated by AT&T under tariff to the Corporation. Within several months, however, the "lifeline" will be a satellite interconnection system with origination facilities owned and operated by PBS and others, satellite capacity owned and operated by Western Union Telegraph Company and tarified to the Corporation, and receive-only facilities owned by local public television licensees.

As a private "membership" corporation and the manager of the only national interconnection for the distribution of programs to public television stations, PBS has considerable powers and responsibilities. In addition to its trade association functions, PBS, among other activities:

- schedules programs and manages program traffic on the national public television interconnection (distribution) system;
- establishes and maintains technical and content standards for access to the national public television interconnection system;
- consults with CPB on program proposals received by CPB in advance of CPB support for program production or acquisition, "to avoid any possibility that CPB will fund programs that the licensees (PBS members) do not want";
- operates the Station Program Cooperative ("SPC"), by which stations "buy" and "sell" each others' programs for broadcast;
- uses certain funds received by it from various sources, including CPB, to contract for program production and acquisition; and
- conducts national promotion efforts for programs scheduled for distribution over the national public television interconnection.

In general, the performance of the local station members of PBS in offering American television viewers an exceptional fare of high quality programming is to be applauded and encouraged. However, the Committee is concerned about the trend toward accumulation of centralized "network" powers in public broadcasting. The concern is not new but has been given added impetus by testimony and other information received during the hearings. The dangers inherent in this trend are significant. There is the danger that the independence of local broadcast licensees, and their abilities to serve the specific interests of their local communities, may be eroding.

From the very first, the Congress has made clear its determination that public broadcasting not develop into a "fourth network" in the commercial sense of the term "network". In such a "network", a central authority determines not only what programs will be produced for national distribution and what programs will be distributed nationally, but also when the programs will be broadcast in various communities around the country; then it promotes those programs in a coordinated fashion, so that a large, national audience may generate the substantial ratings that attract increasingly larger revenues from commercial sponsors.

Development of a public television network system similar to the commercial broadcasting network would be in direct contravention of Congressional purpose. A single, centralized authority would perpetuate a "closed system", subject to the interests of the "insiders", whose interests will inhibit access to program production assistance, national distribution, and local broadcast or programs produced by "outsiders".

Public broadcasting should be a true alternative to commercial broadcasting. Its programs should be, in the words of the Public Broadcasting Act, "programs of high quality, obtained from diverse sources * * *," and they should be "made available to (local) stations who choose to use them at times chosen by the (individual) stations * * *."

The Committee hearing record on S. 2883 discloses disturbing evidence that this danger of centralization presently threatens the desired balance of local and national decisionmaking, leaving public broadcasting open to the possibility of centralized control, political interference, and monopolization. There was evidence that, on at least one occasion, and as a result of its multi-faceted authorities in program distribution, rights clearances, interconnection scheduling and promotion, PBS has virtually dictated the time when a nationally distributed program must be broadcast, if at all, by local public television stations.

It also appears that, as a result of the "Partnership Agreement" between the Corporation and PBS, PBS now holds the combined powers of trade association, manager of the national program distribution system, and wielder of an effective "veto" power over the Corporation's program support decisions. This combination of powers promotes a "closed system" in which independent producers may encounter substantial difficulties in securing the purchase or support of their programs, or national distribution of their programs, or both unless they offer their programs through a PBS member station.

According to PBS's own data, "[i]n FY 1977, only one percent of all the independents presenting programs on PBS chose not to make that presentation through a public television station—although none was required to do so."

Further, according to PBS:

About 70 independents presented "specials" and series on public television in FY 1977; 28 were "new" to the system. In the first five months of FY 1978, PBS distributed more than 20 "specials" by independent producers and sought CPB funding for 19 more. We do not have an exact count, but a number of these producers are also "new" to public television. *In all these cases, the independent decided to work with a public television station* (emphasis added).

In order to carry out the purpose of the Congress in establishing the Corporation for Public Broadcasting to stimulate "programs of high quality, obtained from diverse sources," it must reassert the role envisioned for it in the Public Broadcasting Act of 1967—an independent role in the general public interest. The Corporation is to serve the interests of all of the people in the United States. An important

part of that role is to make decisions on the allocation of funds appropriated to the Corporation to support the production and acquisition of programs.

It is the firm conviction of the Committee that the independence of local public broadcasting stations and openness and accessibility of the overall public broadcasting system to diverse contributors to programming of excellence is best served by a delicate balance of functions in which decisions relating to program support, distribution, promotion, and dissemination to the public are made by numerous and different entities, each performing functions best suited to their particular talents. None of these entities should become the servant of any narrow interests, and each should serve to complement and counterbalance the others in an environment free of domination by any centralized organization, public or private.

EQUAL EMPLOYMENT OPPORTUNITY

This bill institutes clear standards and procedures to enforce equal employment opportunity in public telecommunications by direct means—rules, regulations, reporting requirements, and the penalty of loss or reduction in Federal support for violations of an inarguably clear standard: "Equal opportunity in employment shall be afforded to all qualified persons by all public telecommunications entities receiving funds . . . and no person shall be subjected to discrimination in employment by any such recipient on the grounds of race, color, religion, national origin, or sex."

The bill eliminates the uncertainty over which entity should be responsible for enforcement by charging the Secretary of HEW with this mandate. It is not intended that CPB should have any role as an enforcer of equal employment rules and regulations upon public telecommunications entities. However, CPB is responsible for providing the Secretary with all necessary information.

The bill exempts the smallest public telecommunications entities, those with less than five full-time employees, from the EEO rules and regulations promulgated by the Secretary. This exemption is similar to FCC regulations which exempt such small stations from certain of its EEO reporting requirements. However, the Committee emphasizes that these small entities will be exempt only from HEW's rules and regulations; they are not exempt from the bill's general prohibition on employment discrimination nor any other applicable civil rights laws.

OPEN MEETINGS AND FINANCIAL DISCLOSURE

S. 2883 as reported, insures an important measure of accountability and access for the public. Public telecommunications entities and others involved in public broadcasting are charged with serving the public and accordingly should conduct the public's business in the open. The bill establishes clear standards regarding open meetings, and the Committee contemplates that additional reasonable procedures will be developed by the entities regarding, for example, adequate advance public notice of the time, place and agenda of meetings. The bill stipulates limited specific instances when a meeting may be closed, including discussion of personnel matters, proprietary information, litigation and other matters requiring the confidential advice of

counsel, and the purchase of property or services whenever the premature disclosure of such a contemplated action would compromise prudent business interests. These exemptions are designed to protect the privacy of individuals and confidentiality of important delicate discussions, and should not be abused as a mechanism to prevent the public from having reasonable access to the deliberations of governing boards. In addition, the bill requires public inspection of annual financial reports and audits.

These open meeting and financial disclosure provisions are intended to apply to all public telecommunications entities, CPB, PBS, NPR and any other nonprofit institution engaged in the production, acquisition, distribution or dissemination of educational and cultural radio or television programs.

ESTIMATED COSTS

In compliance with section 403 of the Congressional Budget Act of 1974, the committee requested the Congressional Budget Office to prepare a cost estimate for S. 2883, as reported, which is included in its entirety as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., May 10, 1978.

HON. HOWARD W. CANNON,
*Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for S. 2883, the Public Telecommunications Financing Act of 1978.

Should the Committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

ROBERT A. LEVINE,
Deputy Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

MAY 10, 1978.

1. Bill No. S. 2883.
2. Bill Title: Public Telecommunications Financing Act of 1978.
3. Bill status: As reported from the Committee on Commerce, Science, and Transportation, May 9, 1978.
4. Bill purpose: The primary provisions in this bill will: (1) assist, through matching grants, non-profit educational broadcasting stations or systems, or other non-profit or government educational organizations, in the planning and construction of public television facilities; (2) extend authorization for certain telecommunications demonstration projects; and (3) extend authorization for the Corporation for Public Broadcasting.

This bill is subject to subsequent appropriation action.

5. Cost estimate:

[By fiscal years, in millions of dollars]

	1979	1980	1981	1982	1983
Title I—Construction and planning of facilities:					
Authorization level.....	40	40	40		
Estimated net costs.....	20	40	40	20	
Title II—Demonstration projects:					
Authorization level.....	1				
Estimated net costs.....	1				
Title III—Corporation for Public Broadcasting:					
Authorization level.....			180	200	200
Estimated net costs.....			180	200	200
Total:					
Authorization level.....	41	40	220	200	200
Estimated net costs.....	21	40	220	220	200

The costs of this bill fall within budget function 500.

6. Basis for estimate:

Title I: This title transfers the construction grants program from the Department of Health Education and Welfare to the Department of Commerce, and authorizes the amounts stated in S. 2883 for the next three fiscal years. Additional administrative costs to the Commerce Department, in excess of those already incurred by HEW, are assumed to be negligible. Estimated costs assume a lag between applications and grants, so that the spendout rate in the first year will be fifty percent of the authorization, with the remainder in the second year.

Title II: The bill continues authorization for the demonstration projects for fiscal year 1979 at the amount stated in current law.

Title III: S. 2883 extends the authorization for the Corporation for Public Broadcasting through fiscal year 1983. This program is currently authorized through fiscal year 1980. The additional costs associated with this title are those for fiscal years 1981 through 1983. The 100 percent spendout rate occurs since the entire authorization is assumed transferred to the Corporation in the given fiscal year.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by Stephen Chaikind.

10. Estimated approved by: James L. Blum, Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

Under Title I of S. 2883, as reported, responsibility for administering the Educational Broadcast Facilities Program (EBFP) is transferred with an expanded mission from the Secretary of Health, Education, and Welfare to the Secretary of Commerce. The scope of the EBFP would be enlarged to broaden the eligibility of applicants for "telecommunications facilities" grants to include entities proposing to disseminate noncommercial educational and cultural radio and television programs by nonbroadcast means. It is not possible to estimate precisely the numbers of individuals or businesses or groups or classes or such entities which would fall within the expanded facilities assistance program, although broadcasting entities will most likely continue to be the principal recipients of grants from the

Secretary of Commerce. Special provision is made to encourage operation of and participation in public telecommunications (broadcast and non-broadcast) by minorities and women. As to broadcast recipients, S. 2883 imposes and additional regulatory requirement not presently imposed under the EBFP; maintenance of a complete and itemized inventory of all facilities under the control of the grant recipient. This requirement, as well as the existing record keeping and audit requirements of the EBFP, is imposed as well on newly eligible non-broadcast facilities grantees. Since the record keeping audit and inventory requirements relate only to financial support, Federal and non-Federal, for the acquisition and improvement of apparatus and equipment, no impact on the personal privacy of recipients is anticipated. The amount of additional paper work mandated by Title I is expected to be insubstantial.

It has been estimated by the Department of Health, Education and Welfare that, for each Federal dollar appropriated for EBFP, \$11 has been stimulated in local, State, and private funds. The stimulative effect of the EBFP is likely to continue under the expanded telecommunications facilities program within the Department of Commerce. More efficient expenditure of Federal dollars is provided by requiring the Secretary to compare the advantages of alternate technologies to consider the most cost effective use of facilities funds in choosing among applicants.

In Title II of the bill, as reported, the established Telecommunications Demonstrations program within the Department of Health, Education and Welfare is reauthorized for fiscal year 1979. No other changes are made in this program, and no additional regulatory impact is contemplated.

Title III of S. 2883, as reported, relates to reauthorization of public broadcasting funds to be distributed by the Corporation for Public Broadcasting, a nonprofit private corporation established by the Public Broadcasting Act of 1967. Certain changes in the ways the Corporation is to administer and distribute the Public Broadcasting funds are accomplished. However, since the Corporation, under the terms of the 1967 Act, is specifically declared not to be an agency of the Federal Government, changes made in the manner in which the Corporation operates do not have a regulatory impact.

As under Title I of S. 2883, as reported, noncommercial entities other than public broadcasters are made eligible to receive Federally provided assistance for telecommunications purposes. Essentially the same individuals and businesses and classes of such entities are eligible for assistance from the Corporation.

Other provisions in the bill do involve additional regulation of recipients of assistance from the Corporation, although the Corporation is not principally mandated to carry out such regulation. All recipients of CPB assistance must undergo and make public annual financial audits, and must open meetings of their governing boards to the public except for meetings during which certain specific confidential or business matters are discussed. The Secretary of Health, Education and Welfare is charged with the responsibility of administering equal employment opportunity (EEO) standards applicable to all recipients of assistance from the Corporation. As a consequence, recipients will be required to file reports and other information relating

to their employment practices with both the Department of Health, Education and Welfare and the Corporation. It is to be noted that S. 2883, as reported, directs the Secretary of Health, Education and Welfare to coordinate his reporting requirements with the Federal Communications Commission in order to reduce duplicative and conflicting paper work burdens on entities subject to both FCC and HEW EEO jurisdiction. Moreover recipients employing less than 5 full-time employees are exempt from the paper work requirements of HEW and CPB. No reporting requirements mandated under this title, involving matters relating to the financial management and employment practices, are likely to have any recognizable impact on the personal privacy of any individual affected, and no substantial impact on individuals, consumers, or businesses is to be anticipated.

SECTION-BY-SECTION ANALYSIS

This Act may be cited as the "Public Telecommunications Financing Act of 1978."

TITLE I

Section 101

(a) The heading for part IV of Title III of the Communications Act of 1934 is amended to read as follows:

"Part IV—ASSISTANCE FOR PUBLIC TELECOMMUNICATIONS FACILITIES; TELECOMMUNICATIONS DEMONSTRATIONS; CORPORATION FOR PUBLIC BROADCASTING."

(b) The heading for subpart A of part IV of Title III of the Communications Act is amended to read as follows:

"Subpart A—ASSISTANCE FOR PUBLIC TELECOMMUNICATIONS FACILITIES."

(c) Section 390 of the Communications Act is amended to include assistance for the construction and planning of "public telecommunications facilities." While extending the delivery of educational programs for instructional purposes remains one of the aims of the facilities program, the words "educational and cultural" are used in place of the word "educational," to connote the broader purpose of the program, i.e., to assist in constructing facilities to deliver noncommercial educational and cultural programs "to as many citizens of the United States as possible." In recognition of the fact that over-the-air broadcasting may not in all cases be the most efficient and economical means of extending delivery of public television and radio programs to all citizens, section 390 is amended to expand the types of facilities whose construction may be financed. Accordingly, the word "telecommunications" is used in place of the term "television and radio broadcasting."

In addition to expanding the program for the construction of public telecommunications facilities, section 390 authorizes the provision of assistance in the planning, as well as the construction, of public telecommunications facilities.

Three program objectives are stated in section 390: "(1) extend delivery of noncommercial, educational and cultural radio and television programs to as many citizens of the United States as possible by the most efficient and economical means, including the use of broadcast and nonbroadcast technologies; (2) increase noncommercial, educational and cultural radio and television programs and facilities available to and operated by minorities and women; and (3) strengthen the capability of existing public television and radio stations to provide educational and cultural programs to the public."

Section 102

Section 391 of the Communications Act is amended to provide authorizations of \$40,000,000 for fiscal years 1979, 1980, and 1981, to be used by the Secretary of Commerce to assist in the planning and construction of public telecommunications facilities.

Section 391 is further amended by providing that funds appropriated in each fiscal year shall remain available until expended for projects whose applications have been approved by the Secretary in that fiscal year.

Section 103

Section 392 of the Communications Act is amended to require applicants for construction grants to submit 5-year plans outlining applicants' projected costs thereof.

The section is also amended to allow nonprofit educational or cultural groups other than those "organized primarily to engage in public broadcasting" to apply for facilities grants. In addition, section 392 is amended to require that applicants provide assurances to the Secretary that they will make the most efficient use of the grant.

Section 392 is further amended to authorize the Secretary of Commerce to make planning grants of up to 100 percent of the amount the applicant seeks for planning studies. Studies funded under section 392 must be made available to the Secretary of Commerce.

Section 392 is also amended to require the Secretary of Commerce to establish rules and regulations for approving grants. The Secretary is also required to take affirmative steps to notify minorities and women of the availability of funds under this section, and to give special consideration to applications which increase female and minority operation of and participation in public telecommunications entities.

The section is further amended by adding provisions relating to financial records and facilities inventories of recipients of assistance under this section.

Section 392 is further amended to provide that the Secretary of Commerce is authorized to administer the grants made before, on, or after the enactment of this Act.

Eliminated from section 392 are provisions setting an 8½ percent limit on grants to applicants in any State or territory (this provision is now contained in section 393), and establishing criteria for awarding facilities grants. (The latter provision is replaced by the criteria provisions set forth in section 104.) Section 392A, which pertains to telecommunications demonstrations, is eliminated. (These provisions are now contained in subpart B.)

Section 104

Section 393 of the Communications Act is amended by adding a provision requiring the Secretary of Commerce to consult with the Corporation for Public Broadcasting (CPB), public telecommunications entities, and as appropriate with others, in establishing criteria for awarding planning and construction grants. Such criteria must be consistent with the objectives set forth in this subpart, and must be designed to achieve the following:

“(1) The provision of new public telecommunications facilities to extend service to areas presently not receiving noncommercial, educational and cultural programs;

“(2) The expansion of the service areas of existing public telecommunications entities;

“(3) The development of public telecommunications facilities operated by and available to minorities and women; and

“(4) The improvement of the capabilities of existing public broadcast stations to provide noncommercial, educational and cultural programs.”

Section 393 is further amended to specify that at least 75 percent of the funds appropriated each year must be used for the creation of new public telecommunications entities and the expansion of the service areas of existing public telecommunications entities. In choosing among applicants, the Secretary is required to compare the advantages of alternative technologies on the basis of costs and benefits.

Section 393 is also amended to set an 8 and one-half percent limit on grants to applicants in any one State or territory.

The section is further amended by eliminating all provisions relating to financial records (these are now contained in sections 392 and 395(i)).

Section 105

Section 394 of the Communications Act is amended by adding a provision requiring the Secretary of Commerce, in consultation with the Corporation for Public Broadcasting and other appropriate parties, to develop a long-range facilities plan. Such plan must include a detailed 5-year projection of the national needs for public telecommunications, the broadcast and nonbroadcast facilities required to meet such needs, and the expenditures necessary to provide those facilities. Each year the Secretary is to prepare an inventory of Federal funds distributed to public telecommunications entities during the preceding fiscal year.

Section 394, as amended, requires that the facilities plan be updated each year, and submitted concurrently to the President and the Congress.

The section is further amended by eliminating the provision relating to the Secretary of Health, Education and Welfare's (HEW) rule-making authority (this is now contained in section 395).

TITLE II

Section 201

Section 395(h), as redesignated in section 202(1), is amended to authorize to be appropriated \$1,000,000 for telecommunications demonstrations in fiscal year 1979.

Section 202

Part IV of Title III of the Communications Act of 1934 is further amended by creating a separate subpart for telecommunications demonstrations.

The heading for subpart B of part IV of Title III of the Communications Act is amended to read as follows: "Subpart B—Telecommunications Demonstrations." (Former subpart B is redesignated as subpart C.)

Incorporated within subpart B are former sections 392A and 395, and the contents of former sections 393 and 394. Sections 292A (a), (b), (c), (d), (e), (f), (g), (h), and 395 are redesignated as sections 395 (a), (b), (c), (d), (e), (f), (g), (h), and (k). The provisions relating to records and audit contained in former section 393 are incorporated into this subpart as section 395(i). The provision authorizing the adoption of rules and regulations by the Secretary contained in former section 394 is incorporated into this subpart as section 395(j).

TITLE III

Section 301

Section 396(a) of the Communications Act of 1934 is amended by substituting the word "public" in place of the term "noncommercial educational" in several instances where such term appears. A new paragraph (2) is added relating to the growth and development of nonbroadcast technologies. In paragraph (3), the term "radio and television" is replaced by the word "telecommunications." Paragraph 7 (formerly paragraph (6)) is amended to direct the Corporation for Public Broadcasting to facilitate the development of public telecommunications and to afford maximum protection from extraneous interference or control. These amendments are intended to connote that activities carried out under subpart C are for the benefit of the entire community, and may include both broadcast and nonbroadcast technologies.

Section 302

This section makes a technical amendment to section 396(d)(1) of the Communications Act.

Section 303

Sections 396(g)(1) and 396(g)(2) of the Communications Act are amended by using the word "public" in place of the term "noncommercial educational" in several instances where such term appears. These sections are further amended by incorporating the term "public telecommunications entities", in order to take account of nonbroadcast means of delivering public television or radio services.

Section 396(g)(2)(B) is amended to broaden grant eligibility requirements to include systems of public telecommunications entities, public broadcast stations, noncommercial telecommunications entities, and independent production entities.

The provisions of section 396(g)(2)(G) are eliminated, and section 396(g)(2)(H) is redesignated as section 396(g)(2)(G).

A new section 396(g)(2)(H) is added to authorize CPB to provide assistance for the use of nonbroadcast technologies for the dissemination of noncommercial television or radio programs.

Section 396(g)(2)(I) is added to give CPB the authority to take such other actions as may be necessary to carry out its purposes.

A provision is added to this paragraph (2) to assure that the Corporation may not obligate the Federal Government to provide sums to meet any obligation of the Corporation which exceeds amounts provided to the Corporation in advance appropriation Acts.

Section 396(g)(3) is amended by adding interconnection systems or facilities, and public telecommunications entities, systems, and networks to the list of enterprises that the Corporation is prohibited from owning or operating, and by adding that CPB also is prohibited from producing programs, scheduling programs for public dissemination or disseminating programs.

A new subsection 396(g)(4) is added which requires that all meetings of the CPB Board of Directors be open to the public, with specified exceptions.

Section 304

Section 396(h) of the Communications Act is amended by adding a provision providing that all public telecommunications entities shall have reasonable access to space satellite interconnection facilities and services funded under this part. Remaining capacity on interconnection systems must be made available to other persons for the transmission of program material to public telecommunications entities, at charges comparable to those charged public telecommunications entities.

Section 305

Section 396(i) of the Communications Act is amended to require that the Corporation's annual report include the 5-year plan required by this section, and a summary of the annual report provided to the Secretary of HEW pursuant to new section 398.

Section 396(i) is further amended to require CPB, in consultation with public telecommunications entities, to create a 5-year plan for the development of public television and radio services. Such plan must be updated each year and submitted to the President and the Congress as part of CPB's annual report.

Section 306

Section 396(k) of the Communications Act is amended to authorize to be appropriated up to \$180,000,000 for fiscal year 1981 and up to \$200,000,000 for each of the fiscal years 1982 and 1983. Section 396(k) is further amended to reduce the ratio of non-Federal dollars which have to be raised to obtain appropriated Federal dollars from 2.5:1 to 2.25:1, beginning in fiscal year 1981. Section 396(k) is further amended to permit appropriated funds to remain available until expended.

Additionally, section 396(k) is amended to take account of the fact that some public broadcasting entities use a different fiscal year for accounting purposes than the Federal fiscal year.

The section is also amended to require that funds appropriated to CPB must be disbursed by the Secretary of the Treasury on a quarterly basis, in such amounts as the Corporation certifies will be necessary to meet its financial obligations in the succeeding quarter.

Section 396(k) is further amended to require CPB to establish an annual budget according to which it shall make grants to or contracts with entities outside of the Corporation. In fiscal years 1981, 1982, and 1983, this budget must consist of not less than 95 percent of the annual appropriation. In fiscal year 1981, the Corporation may expend not more than 5 percent of its annual appropriation on internal administrative costs. In fiscal years 1982 and 1983, the Corporation may expend no more than 105 percent of the amount derived for the preceding year for its internal administrative costs.

The section is further amended to require that all meetings of the governing boards of any public broadcasting entity or public telecommunications entity receiving funds from CPB must be open to the public, except when such meetings deal with specified matters. Additionally, the annual financial and audit reports submitted pursuant to section 396(1)(3)(B), as amended, by any such entities must be available for public examination.

Section 396(k) otherwise continues the provisions of existing law regarding the distribution of discretionary funds (Community Service Grants) to public radio and television stations.

Section 307

Section 396(1)(3) of the Communications Act of 1934 is amended to require the Comptroller General to adopt, in consultation with CPB and others as appropriate, uniform accounting principles to be used by all public telecommunications entities receiving funds from CPB. Such principles must be designed to account fully for all funds received and expended for public telecommunications purposes.

Section 396(1)(3) is further amended to require any public broadcasting entity and public telecommunications entity receiving funds under this part: (1) to keep its books, records, and financial accounts in such form as required by CPB; (2) to undergo an annual audit by certified auditors; and (3) to furnish annually to CPB a copy of the audit report and other information on finances and operations that CPB may require.

Section 396(1)(3) continues for all other recipients of CPB assistance, other than by grant or contract awarded pursuant to competitive bidding procedures, the existing provisions relating to financial records and audit. The provision relating to audits by CPB or the Comptroller General contained in section 396(1)(3)(B) is redesignated as section 396(1)(3)(D), and the word "related" is used in place of the word "pertinent" in this amended subsection.

Section 308

Section 398(a) of the Communications Act of 1934 is amended by replacing the term "educational television or radio broadcasting" with the term "public telecommunications."

Section 398 is further amended to provide that "equal opportunity in employment shall be afforded to all qualified persons by all public telecommunications entities receiving funds pursuant to subpart C" and that "no person shall be subjected to discrimination in employment by any such recipient on the grounds of race, color, religion, national origin, or sex." The Secretary of HEW is charged with

enforcing this provision, and is directed to coordinate with the Federal Communications Commission to develop reporting requirements based upon mutually uniform and consistent definitions and categories of information.

The section is also amended to require CPB to incorporate into each grant or contract with any recipient of CPB assistance a statement indicating that the recipient will comply with the provisions of this section and the rules and regulations adopted by the Secretary of HEW. Each recipient is directed to provide CPB with such information as CPB may require.

The bill as reported also amends section 398 to require that the Corporation, based upon its information-collection activities, must provide to the Secretary of HEW an annual report in such form and containing such information as the Secretary may require. CPB must submit a summary of the report to the President and the Congress.

Section 398 is further amended to require that whenever the Secretary makes a final determination that a recipient is not in compliance with the provisions of this section, the Secretary must inform CPB of its determination and may direct CPB to suspend or reduce payments to the recipient until such time as the recipient enters into a compliance agreement approved by the Secretary. CPB must comply with such directives by the Secretary. The provisions relating to the Secretary of HEW's enforcement authority under this section is restricted to those entities employing five or more full-time employees.

TITLE IV

Section 401

Section 397 of the Communications Act is amended to revise the definitions section in the current Act, in order to make such definitions consistent with the provisions of the Act, as amended.

Section 402

This section makes a technical amendment to subpart D of part IV of Title III of the Communications Act.

Section 403

This section provides that this Act shall take effect on October 1, 1978, except that provisions of sections 102 and 201, and the provision of section 306(k)(1) of the Communications Act (as amended by section 306), shall take effect on the date of enactment.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of Rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows (existing law proposed to be omitted is

enclosed in black brackets, new matter is printed in italic; existing law in which no change is proposed is shown in roman):

THE COMMUNICATIONS ACT OF 1934

[PART IV—ASSISTANCE FOR NONCOMMERCIAL EDUCATIONAL BROADCASTING FACILITIES; TELECOMMUNICATIONS DEMONSTRATIONS; CORPORATION FOR PUBLIC BROADCASTING

Subpart A—Assistance for Noncommercial Educational Broadcasting Facilities and Telecommunications Demonstrations

390. **DECLARATION OF PURPOSE.**—The purposes of this subpart are (1) to assist (through matching grants) in the construction of noncommercial educational television or radio broadcasting facilities, and (2) to demonstrate (through grants or contracts) the use of telecommunications technologies for the distribution and dissemination of health, education, and other public or social service information. **]**

PART IV—ASSISTANCE FOR PUBLIC TELECOMMUNICATIONS FACILITIES; TELECOMMUNICATIONS DEMONSTRATIONS; CORPORATION FOR PUBLIC BROADCASTING

Subpart A—Assistance for Public Telecommunications Facilities

DECLARATION OF PURPOSE

SEC. 390. The purpose of this subpart is to assist (through matching grants) in the planning and construction of public telecommunications facilities in order to achieve the following objectives: (1) extend delivery of noncommercial educational and cultural radio and television programs to as many citizens of the United States as possible by the most efficient and economical means, including the use of broadcast and nonbroadcast technologies; (2) increase noncommercial educational and cultural radio and television programs for, and facilities available to and operated by, minorities and women; and (3) strengthen the capability of existing public television and radio stations to provide such noncommercial educational and cultural programs to the public.

[391. AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated \$7,500,000 for the period July 1, 1976, through September 30, 1976, and \$30,000,000 for the fiscal year ending September 30, 1977, to assist (through matching grants) in the construction of noncommercial educational television or radio broadcasting facilities as provided in this subpart. Sums appropriated under this section for any fiscal year or period shall remain available for payment of grants for projects for which applications approved under section 392 have been submitted under such section within one year after the last day of such fiscal year or period. **]**

AUTHORIZATION OF APPROPRIATIONS

SEC. 391. There are authorized to be appropriated \$40,000,000 for each of the fiscal years 1979, 1980, and 1981, to be used by the Secretary of Commerce to assist in the planning and construction of public telecommunications facilities as provided in this subpart. Sums appropriated under this subpart for any fiscal year shall remain available until expended for payment of grants for projects for which applications approved by the Secretary of Commerce pursuant to this part have been submitted within such fiscal year.

[392. GRANTS FOR CONSTRUCTION.—(a) For each project for the construction of noncommercial educational television or radio broadcasting facilities there shall be submitted to the Secretary an application for a grant containing such information with respect to such project as the Secretary may by regulation require, including the total cost of such project and the amount of the Federal grant requested for such project, and providing assurance satisfactory to the Secretary—

(1) that the applicant is (A) an agency or officer responsible for the supervision of public elementary or secondary education or public higher education within that State, or within a political subdivision thereof, (B) in the case of a project for television facilities, the State noncommercial educational television agency or, in the case of a project for radio facilities, the State educational radio agency, (C) a public or private nonprofit college or university or other educational or cultural institution which is affiliated with an eligible college or university, (D)(i) in the case of a project for television facilities, a nonprofit foundation, corporation, or association which is organized primarily to engage in or encourage noncommercial educational television broadcasting and is eligible to receive a license from the Federal Communications Commission for a noncommercial educational television broadcasting station pursuant to the rules and regulations of the Commission in effect on April 12, 1962, or (ii) in the case of a project for radio facilities, a nonprofit foundation, corporation, or association which is organized primarily to engage in or encourage noncommercial educational radio broadcasting and is eligible to receive a license from the Federal Communications Commission; or meets the requirements of clause (i) and is also organized to engage in or encourage such radio broadcasting and is eligible for such a license for such a radio station, or (E) a municipality which owns and operates a broadcasting facility transmitting only noncommercial programs;

(2) that the operation of such educational broadcasting facilities will be under the control of the applicant or a person qualified under paragraph (1) to be such an applicant;

(3) that necessary funds to construct, operate, and maintain such educational broadcasting facilities will be available when needed;

(4) that such broadcasting facilities will be used only for educational purposes; and

(5) that, in the case of an application with respect to radio broadcasting facilities, there has been comprehensive planning for educational broadcasting facilities and services in the area the applicant proposes to serve and the applicant has participated in such planning, and the applicant will make the most efficient use of the frequency assignment.

(b) The total of the grants made under this part from the appropriation for any fiscal year for the construction of noncommercial educational television broadcasting facilities and noncommercial educational radio broadcasting facilities in any State may not exceed $\frac{1}{2}$ per centum of such appropriation.

(c)(1) In order to assure proper coordination of construction of noncommercial educational television broadcasting facilities within each State which has established a State educational television agency, each applicant for a grant under this section for a project for construction of such facilities in such State, other than such agency, shall notify such agency of each application for such a grant which is submitted by it to the Secretary, and the Secretary shall advise such agency with respect to the disposition of each such application.

(2) In order to assure proper coordination of construction of noncommercial educational radio broadcasting facilities within each State which has established a State educational radio agency, each applicant for a grant under this section for a project for construction of such facilities in such State, other than such agency, shall notify such agency of each application for such a grant which is submitted by it to the Secretary, and the Secretary shall advise such agency with respect to the disposition of each such application.

(d)(1) The Secretary shall base his determinations of whether to approve applications for television grants under this section and the amount of such grants on criteria set forth in regulations and designed to achieve (A) a strengthening of the capability of existing noncommercial educational television stations to provide local services; (B) the adaptation of existing noncommercial educational television facilities to broaden educational uses; and (C) extension of noncommercial educational television services, with due consideration to equitable geographic coverage throughout the United States.

(2) The Secretary shall base his determination of whether to approve applications for radio grants under this section and the amount of such grants on criteria set forth in regulations and designed to achieve (A) extension of noncommercial educational radio services with due consideration to equitable geographic coverage throughout the United States; (B) a strengthening of the capability of existing noncommercial educational radio stations to provide local service; and (C) the provision of multiple radio stations in major population centers to broaden services for special interest, minority, and educational uses.

(e) Upon approving any application under this section with respect to any project, the Secretary shall make a grant to the applicant in the amount determined by him, but not exceeding 75 per centum of the amount determined by the Secretary to be the reasonable and necessary cost of such project. The Secretary shall pay such amount from the sum available therefor, in advance or by way of reimbursement, and in such installments consistent with construction progress, as he may determine.

(f) If, within ten years after completion of any project for construction of educational television or radio broadcasting facilities with respect to which a grant has been made under this section—

(1) the applicant or other owner of such facilities ceases to be an agency, officer, institution, foundation, corporation, or association described in subsection (a)(1), or

(2) such facilities cease to be used for noncommercial educational television purposes or noncommercial educational radio purposes, as the case may be (unless the Secretary determines, in accordance with regulations, that there is good cause for releasing the applicant or other owner from the obligation so to do), the United States shall be entitled to recover from the applicant or other owner of such facilities the amount bearing the same ratio to the then value (as determined by agreement of the parties or by action brought in the United States district court for the district in which such facilities are situated) of such facilities, as the amount of the Federal participation bore to the cost of construction of such facilities.】

GRANTS FOR CONSTRUCTION AND PLANNING

SEC. 392. (a) For each project for the construction of public telecommunications facilities there shall be submitted to the Secretary of Commerce an application for a grant containing such information with respect to such project as the Secretary may require, including the total cost of such project, the amount of the grant requested for such project, and a 5-year plan outlining the applicant's projected facilities requirements and the projected costs of such facilities requirements. Each applicant shall also provide assurances satisfactory to the Secretary that—

(1) the applicant is (A) a public broadcast station; (B) a non-commercial telecommunications entity; or (C) a system of public telecommunications entities;

(2) the operation of such public telecommunications facilities will be under the control of the applicant;

(3) necessary funds to construct, operate, and maintain such public telecommunications facilities will be available when needed;

(4) such public telecommunications facilities will be used only for noncommercial educational or cultural purposes;

(5) the applicant has participated in comprehensive planning for such public telecommunications facilities in the area which the applicant proposes to serve, and such planning has included an evaluation of alternate technologies and coordination with State educational television and radio agencies, as appropriate; and

(6) the applicant will make the most efficient use of the grant.

(b) Upon approving any application under this section with respect to any project for the construction of public telecommunications facilities, the Secretary of Commerce shall make a grant to the applicant in an amount determined by the Secretary, except that such amount shall not exceed 75 percent of the amount determined by the Secretary to be the reasonable and necessary cost of such project.

(c) The Secretary of Commerce may provide such funds as the Secretary deems necessary for the planning of any project for which construction funds may be obtained under this section. An applicant for a planning grant shall provide such information with respect to such project as the Secretary may require and shall provide assurances satisfactory to the Secretary that the applicant meets the eligibility requirements of subsection (a) of this section to receive construction assistance.

(d) Any studies conducted by or for any grant recipient under this section shall be provided to the Secretary of Commerce, if such studies are conducted through the use of funds received under this section.

(e) *The Secretary of Commerce shall establish such rules and regulations as may be necessary to carry out this subpart, including rules and regulations relating to the order of priority in approving applications for construction projects and relating to determining the amount of each grant for such projects.*

(f) *In establishing criteria for grants pursuant to section 393 of this subpart and in establishing procedures relating to the order of priority established in subsection (e) of this section in approving applications for grants, the Secretary of Commerce shall give special consideration to applications which increase minority and women's operation of, and participation in, public telecommunications entities. The Secretary shall take affirmative steps to inform minorities and women of the availability of funds under this subpart, and the localities where new public telecommunications facilities are needed, and to provide such other assistance and information as may be appropriate.*

(g) *If, within 10 years after completion of any project for construction of public telecommunications facilities with respect to which a grant has been made under this section—*

(1) *the applicant or other owner of such facilities ceases to be a station, entity or system described in subsection (a)(1) of this section; or*

(2) *such facilities cease to be used in whole or in part for non-commercial public telecommunications purposes (unless the Secretary determines, in accordance with regulations, that there is good cause for releasing the applicant or other owner from the obligation to do so),*

the United States shall be entitled to recover from the applicant or other owner of such facilities the amount bearing the same ratio to the value of such facilities at the time of such determination (as determined by agreement of the parties or by action brought in the United States district court for the district in which such facilities are situated), as the amount of the Federal participation bears to the cost of construction of such facilities.

(h) *Each recipient of assistance under this subpart shall keep such records as may be reasonably necessary to enable the Secretary of Commerce to carry out the functions of the Secretary under this subpart, including a complete and itemized inventory of all telecommunications facilities under the control of such recipient, and records which fully disclose the amount and the disposition by such recipient of the proceeds of such assistance, the total cost of the project in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the project supplied by other sources, and such other records as will facilitate an effective audit.*

(i) *The Secretary of Commerce and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of any recipient of assistance under this subpart that are pertinent to assistance received under this subpart.*

[393. RECORDS.—(a) *Each recipient of assistance under this subpart shall keep such records as may be reasonably necessary to enable the Secretary to carry out his functions under this subpart, including records which fully disclose the amount and the disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is*

given or used, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this subpart.】

CRITERIA FOR APPROVAL AND EXPENDITURES BY SECRETARY OF COMMERCE

SEC. 393. (a) The Secretary of Commerce, in consultation with the Corporation, public telecommunications entities, and as appropriate with others, shall establish criteria for making construction and planning grants. Such criteria shall be consistent with the objectives and provisions set forth in this subpart, and shall be made available to interested parties upon request.

(b) The Secretary of Commerce shall base determinations of whether to approve applications for grants under this subpart, and the amount of such grants, on criteria developed pursuant to subsection (a) of this section and designed to achieve—

(1) the provision of new telecommunications facilities to extend service to areas presently not receiving noncommercial educational and cultural programs;

(2) the expansion of the service areas of existing public telecommunications entities;

(3) the development of public telecommunications facilities operated by and available to minorities and women; and

(4) the improvement of the capabilities of existing public broadcast stations to provide noncommercial educational and cultural programs.

(c) Of the funds appropriated pursuant to section 391 of this subpart, not less than 75 percent shall be available to extend delivery of noncommercial educational and cultural programs to areas not receiving such programs through grants for facilities of new public telecommunications entities and of existing public telecommunications entities, and preoperational expenses associated with such facilities. In choosing among applicants for grants, the Secretary shall compare the advantages of alternate technologies on the basis of costs and benefits.

(d) The total of the grants made under this subpart from the appropriation for any fiscal year for the construction of public telecommunications facilities in any State may not exceed 8½ percent of such appropriation.

【394. RULES AND REGULATIONS.—The Secretary is authorized to make such rules and regulations as may be necessary to carry out this subpart, including regulations relating to the order of priority in approving applications for projects under section 392 or to determining the amounts of grants for such projects.】

LONG-RANGE PLANNING FOR FACILITIES

SEC. 394. (a) The Secretary of Commerce, in consultation with the Corporation, public telecommunications entities, and as appropriate with other parties, shall develop a long-range plan to accomplish the objectives set forth in section 390 of this subpart. Such plan shall include a detailed 5-year projection of national needs for public telecommunications, the broadcast and nonbroadcast public telecommunications facilities required

to meet such needs, and the expenditures necessary to provide those facilities.

(b) *The Secretary of Commerce shall prepare annually a comprehensive and detailed inventory of funds distributed by Federal departments and agencies to public telecommunications entities during the preceding fiscal year.*

(c) *The plan required in subsection (a), up-dated annually, an annual summary of the activities of the Secretary of Commerce in implementing the plan, and the inventory required in subsection (b) shall be submitted concurrently to the President and the Congress on or before the 31st day of December of each year.*

Subpart B—Telecommunications Demonstrations

Declaration of Purpose; Grants and Contracts

[392A.] 395. (a) It is the purpose of this section to promote the development of nonbroadcast telecommunications facilities and services for the transmission, distribution and delivery of health, education, and public or social service information. The Secretary is authorized, upon receipt of an application in such form and containing such information as he may by regulation require, to make grants to, and enter into contracts with public and private nonprofit agencies, organizations, and institutions for the purpose of carrying out telecommunications demonstrations.

Application Approval

(b) The Secretary may approve an application submitted under subsection (a) if he determines—

(1) that the project for which application is made will demonstrate innovative methods or techniques of utilizing nonbroadcast telecommunications equipment or facilities to satisfy the purpose of this section;

(2) that demonstrations and related activities assisted under this section will remain under the administration and control of the applicant;

(3) that the applicant has the managerial and technical capability to carry out the project for which the application is made; and

(4) that the facilities and equipment acquired or developed pursuant to the application will be used substantially for the transmission, distribution, and delivery of health, education, or public or social service information.

Amount of Grant or Contract; Payment

(c) Upon approving any application under this section with respect to any project, the Secretary shall make a grant to or enter into a contract with the applicant in an amount determined by the Secretary not to exceed the reasonable and necessary cost of such project. The Secretary shall pay such amount from the sum available therefor, in advance or by way of reimbursement, and in such installments consistent with established practice, as he may determine.

Uses of Funds

(d) Funds made available pursuant to this section shall not be available for the construction, remodeling, or repair of structures to house the facilities or equipment acquired or developed with such funds, except that such funds may be used for minor remodeling which is necessary for an incident to the installation of such facilities or equipment.

Nonbroadcast Telecommunications Facilities

(e) For purposes of this section, the term "nonbroadcast telecommunications facilities" includes, but is not limited to, cable television systems, communications satellite systems and related terminal equipment, and other methods of transmitting, emitting, or receiving images and sounds or intelligence by means of wire, radio, optical, electromagnetic or other means.

Duration of Funding of Demonstrations

(f) The funding of any demonstration pursuant to this section shall continue for not more than three years from the date of the original grant or contract.

Summary and Evaluation

(g) The Secretary shall require that the recipient of a grant or contract under this section submit a summary and evaluation of the results of the demonstration at least annually for each year in which funds are received pursuant to this section.

Authorization of Appropriations

(h) There are authorized to be appropriated \$1,000,000 for the fiscal year ending [September 30, 1977, and \$250,000 for the period July 1, 1976, through September 30, 1976, to carry out the provisions of this section] *September 30, 1979, to be used by the Secretary of Health, Education, and Welfare to carry out the provisions of this section.* Sums appropriated under this subsection for any fiscal year or period shall remain available for payment of grants or contracts for projects for which applications approved under this section have been submitted within one year after the last day of such fiscal year or period.

Records; Access by Secretary and Comptroller General

(i) (1) *Each recipient of assistance under this subpart shall keep such records as may be reasonably necessary to enable the Secretary of Health, Education, and Welfare to carry out the Secretary's functions under this subpart, including records which fully disclose the amount and the disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.*

(2) *The Secretary of Health, Education, and Welfare and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this subpart.*

Rules and Regulations

(j) *The Secretary is authorized to make such rules and regulations as may be necessary to carry out this subpart, including regulations relating to the order of priority in approving applications for projects under section 392 of this part or to determining the amounts of grants for such projects.*

Assistance by Commission; Coordination With Commission and Corporation

395(k) The Federal Communications Commission is authorized to provide such assistance in carrying out the provisions of this subpart as may be requested by the Secretary. The Secretary shall provide for close coordination with the Federal Communications Commission in the administration of his functions under this subpart which are of interest to or affect the functions of the Commission. The Secretary shall provide for close coordination with the Corporation for Public Broadcasting in the administration of his functions under this subpart which are of interest to or affect the functions of the Corporation.

SUBPART [B] C—CORPORATION FOR PUBLIC BROADCASTING

[396. (a) CONGRESSIONAL DECLARATION OF POLICY.—The Congress hereby finds and declares—

(1) that it is in the public interest to encourage the growth and development of noncommercial educational radio and television broadcasting, including the use of such media for instructional purposes;

(2) that expansion and development of noncommercial educational radio and television broadcasting and of diversity of its programming depend on freedom, imagination, and initiative on both the local and national levels;

(3) that the encouragement and support of noncommercial educational radio and television broadcasting, while matters of importance for private and local development, are also of appropriate and important concern to the Federal Government;

(4) that it furthers the general welfare to encourage noncommercial educational radio and television broadcast programming which will be responsive to the interests of people both in particular localities and throughout the United States, and which will constitute an expression of diversity and excellence;

(5) that it is necessary and appropriate for the Federal Government to complement, assist, and support a national policy that will most effectively make noncommercial educational radio and television service available to all the citizens of the United States;

(6) that a private corporation should be created to facilitate the development of educational radio and television broadcasting and to afford maximum protection to such broadcasting from extraneous interference and control.]

SEC. 396. (a) The Congress hereby finds and declares that—

(1) it is in the public interest to encourage the growth and development of public radio and television broadcasting, including the use of such media for instructional, educational, and cultural purposes;

(2) it is in the public interest to encourage the growth and development of nonbroadcast telecommunications technologies for the delivery of noncommercial educational and cultural radio and television programs;

(3) expansion and development of public telecommunications and of diversity of its programming depend on freedom, imagination, and initiative on both local and national levels;

(4) the encouragement and support of public telecommunications, while matters of importance for private and local development, are also of appropriate and important concern to the Federal Government;

(5) it furthers the general welfare to encourage noncommercial educational and cultural radio and television programs which will be responsive to the interests of people both in particular localities and throughout the United States, and which will constitute an expression of diversity and excellence;

(6) it is necessary and appropriate for the Federal Government to complement, assist, and support a national policy that will most effectively make noncommercial educational and cultural radio and television programs available to all the citizens of the United States; and

(7) the Corporation for Public Broadcasting should facilitate the development of public telecommunications and afford maximum protection from extraneous interference and control.

(b) CORPORATION ESTABLISHED.—There is authorized to be established a nonprofit corporation, to be known as the "Corporation for Public Broadcasting," which will not be an agency or establishment of the United States Government. The Corporation shall be subject to the provisions of this section, and, to the extent consistent with this section, to the District of Columbia Nonprofit Corporation Act.

(c) BOARD OF DIRECTORS.—(1) The Corporation shall have a Board of Directors (hereinafter in this section referred to as the "Board"), consisting of fifteen members appointed by the President, by and with the advice and consent of the Senate. Not more than eight members of the Board may be members of the same political party.

(2) The members of the Board (A) shall be selected from among citizens of the United States (not regular full-time employees of the United States) who are eminent in such fields as education, cultural and civic affairs, or the arts, including radio and television; (B) shall be selected so as to provide as nearly as practicable a broad representation of various regions of the country, various professions and occupations, and various kinds of talent and experience appropriate to the functions and responsibilities of the Corporation.

(3) The members of the initial Board of Directors shall serve as incorporators and shall take whatever actions are necessary to establish the Corporation under the District of Columbia Nonprofit Corporation Act.

(4) The term of office of each member of the Board shall be six years; except that (A) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and (B)

the terms of office of members first taking office shall begin on the date of incorporation and shall expire, as designated at the time of their appointment, five at the end of two years, five at the end of four years, and five at the end of six years. No member shall be eligible to serve in excess of two consecutive terms of six years each. Notwithstanding the preceding provisions of this paragraph, a member whose term has expired may serve until his successor has qualified.

(5) Any vacancy in the Board shall not affect its power, but shall be filled in the manner in which the original appointments were made.

(d) **ELECTION OF CHAIRMAN; COMPENSATION.**—(1) The [President shall designate one of the members first appointed to the Board as Chairman; thereafter the] members of the Board shall annually elect one of their number as Chairman. The members of the Board shall also elect one or more of them as a Vice Chairman or Vice Chairmen.

(2) The members of the Board shall not, by reason of such membership, be deemed to be employees of the United States. They shall, while attending meetings of the Board or while engaged in duties related to such meetings or in other activities of the Board pursuant to this subpart be entitled to receive compensation at the rate of \$100 per day including travel time, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, equal to that authorized by law (5 USC 5703) for persons in the Government service employed intermittently.

(e) **OFFICERS AND EMPLOYEES.**—(1) The Corporation shall have a President, and such other officers as may be named and appointed by the Board for terms and at rates of compensation fixed by the Board. No individual other than a citizen of the United States may be an officer of the Corporation. No officer of the Corporation, other than the Chairman and any Vice Chairman, may receive any salary or other compensation from any source other than the Corporation during the period of his employment by the Corporation. All officers shall serve at the pleasure of the Board.

(2) Except as provided in the second sentence of subsection (c)(1) of this section, no political test or qualification shall be used in selecting, appointing, promoting, or taking other personnel actions with respect to officers, agents, and employees of the Corporation.

(f) **NONPROFIT AND NONPOLITICAL NATURE OF THE CORPORATION.**—(1) The Corporation shall have no power to issue any shares of stock, or to declare or pay any dividends.

(2) No part of the income or assets of the Corporation shall inure to the benefit of any director, officer, employee, or any other individual except as salary or reasonable compensation for services.

(3) The Corporation may not contribute to or otherwise support any political party or candidate for elective public office.

[(g) **PURPOSES AND ACTIVITIES OF THE CORPORATION.** (1) In order to achieve the objectives and to carry out the purposes of this subpart as set out in subsection (a), the Corporation is authorized to—

(A) facilitate the full development of educational broadcasting in which programs of high quality, obtained from diverse sources, will be made available to noncommercial educational television or radio broadcast stations, with strict adherence to objectivity and balance in all programs or series of programs of a controversial nature;

(B) assist in the establishment and development of one or more systems of interconnection to be used for the distribution of educational television or radio programs so that all noncommercial educational television or radio broadcast stations that wish to may broadcast the programs at times chosen by the stations;

(C) assist in the establishment and development of one or more systems of noncommercial educational television or radio broadcast stations throughout the United States;

(D) carry out its purposes and functions and engage in its activities in ways that will most effectively assure the maximum freedom of the noncommercial educational television or radio broadcast systems and local stations from interference with or control of program content or other activities.

(2) Included in the activities of the Corporation authorized for accomplishment of the purposes set forth in subsection (a) of this section, are among others not specifically named—

(A) to obtain grants from and to make contracts with individuals and with private, State, and Federal agencies, organizations, and institutions;

(B) to contract with or make grants to program production entities, individuals, and selected noncommercial educational broadcast stations for the production of, and otherwise to procure, educational television or radio programs for national or regional distribution to noncommercial educational broadcast stations;

(C) to make payments to existing and new noncommercial educational broadcast stations to aid in financing local educational television or radio programming costs of such stations, particularly innovative approaches thereto, and other costs of operation of such stations;

(D) to establish and maintain a library and archives of noncommercial educational television or radio programs and related materials and develop public awareness of and disseminate information about noncommercial educational television or radio broadcasting by various means, including the publication of a journal;

(E) to arrange, by grant or contract with appropriate public or private agencies, organizations, or institutions, for interconnection facilities suitable for distribution and transmission of educational television or radio programs to noncommercial educational broadcast stations;

(F) to hire or accept the voluntary services of consultants, experts, advisory boards, and panels to aid the Corporation in carrying out the purposes of this section;

(G) to encourage the creation of new noncommercial educational broadcast stations in order to enhance such service on a local, State, regional, and national basis;

(H) conduct (directly or through grants or contracts) research, demonstrations, or training in matters related to noncommercial educational television or radio broadcasting and the use of non-broadcast communications technologies for the dissemination of educational television or radio programs.

(3) To carry out the foregoing purposes and engage in the foregoing activities, the Corporation shall have the usual powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act, except that the Corporation may not own or operate any television or radio broadcast station, system, or network, com-

munity antenna television system, or interconnection or program production facility.】

Purposes and Activities of Corporation

(g) (1) *In order to achieve the objectives and to carry out the purposes of this subpart, as set out in subsection (a) of this section, the Corporation is authorized to—*

(A) *facilitate the full development of public telecommunications in which programs of high quality, obtained from diverse sources, will be made available to public telecommunications entities, with strict adherence to objectivity and balance in all programs or series of programs of a controversial nature;*

(B) *assist in the establishment and development of one or more interconnection systems to be used for the distribution of noncommercial educational and cultural radio or television programs so that all public telecommunications entities may disseminate the programs at times chosen by the entities;*

(C) *assist in the establishment and development of one or more systems of public telecommunications entities throughout the United States; and*

(D) *carry out its purposes and functions and engage in its activities in ways that will most effectively assure the maximum freedom of public telecommunications systems and local public telecommunications entities from interference with, or control of, program content or other activities.*

(2) *In order to carry out the purposes set forth in subsection (a) of this section, the Corporation may—*

(A) *obtain grants from and make contracts with individuals and with private, State, and Federal agencies, organizations, and institutions;*

(B) *contract with or make grants to national, regional, and other systems of public telecommunications entities, public broadcast stations, noncommercial telecommunications entities, and independent production entities for the production or acquisition of noncommercial educational and cultural radio and television programs to be made available for use by public telecommunications entities;*

(C) *make payments to existing and new public telecommunications entities to aid in financing the production or acquisition of noncommercial educational and cultural radio and television programs by such entities, particularly innovative approaches to programs, and other costs of operation of such entities;*

(D) *establish and maintain, or contribute to, a library and archives of noncommercial educational and cultural radio and television programs and related materials and develop public awareness of, and disseminate information about, public telecommunications services by various means, including the publication of a journal;*

(E) *arrange, by grant to or contract with appropriate public or private agencies, organizations, or institutions, for interconnection facilities suitable for distribution and transmission of educational and cultural radio and television programs to public telecommunications entities;*

(F) hire or accept the voluntary services of consultants, experts, advisory boards, and panels to aid the Corporation in carrying out the purposes of this subpart;

(G) conduct (directly or through grants or contracts) research, demonstrations, or training in matters related to public television or radio broadcasting and the use of nonbroadcast communications technologies for the dissemination of noncommercial educational and cultural television or radio programs;

(H) make grants or contracts for the use of broadcast and non-broadcast telecommunications technologies for the dissemination to the public of noncommercial radio and television programs; and

(I) take such other actions as may be necessary to accomplish the purposes set forth in subsection (a) of this section.

Nothing contained in this paragraph (2) shall be construed to commit the Federal Government to provide any sums for the payment of any obligation of the Corporation which exceeds amounts provided in advance in appropriation Acts.

(3) To carry out the foregoing purposes and engage in the foregoing activities, the Corporation shall have the usual powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act, except that the Corporation is prohibited from—

(A) owning or operating any television or radio broadcast station, system, or network, community antenna television system, interconnection system or facility, program production facility, or any public telecommunications entity, system, or network; and

(B) producing programs, scheduling programs for dissemination, or disseminating programs to the public.

(4) All meetings of the Board of Directors of the Corporation shall be open to the public under such terms, conditions, and exceptions as are set forth in subsection (k)(4) of this section.

[(h) AUTHORIZATION FOR FREE OR REDUCED RATE INTERCONNECTION SERVICE.—Nothing in the Communications Act of 1934, as amended, or in any other provision of law shall be construed to prevent United States communications common carriers from rendering free or reduced rate communications interconnection services for noncommercial educational television or radio services, subject to such rules and regulations as the Federal Communications Commission may prescribe.]

Interconnection Service

(h)(1) Nothing in this Act, or in any other provision of law, shall be construed to prevent United States communications common carriers from rendering free or reduced rate communications interconnection services for public television or radio services, subject to such rules and regulations as the Federal Communications Commission may prescribe.

(2) Subject to such terms and conditions as may be established by public telecommunications entities receiving space satellite interconnection facilities or services purchased or arranged for, in whole or in part, with funds authorized under this part, other public telecommunications entities shall have reasonable access to such facilities or services for the distribution of educational and cultural programs to public telecommunications entities. Any remaining capacity shall be made available to other persons for the transmission of noncommercial educational and cultural programs and program information relating to such programs, to public telecommunica-

tions entities, at a charge or charges comparable to the charge or charges, if any, imposed upon a public telecommunications entity for the distribution of noncommercial educational and cultural programs to public telecommunications entities. No such person shall be denied such access whenever sufficient capacity is available.

[(i) REPORT TO CONGRESS.—The Corporation shall submit an annual report for the preceding fiscal year ending June 30 to the President for transmittal to the Congress on or before the 31st day of December of each year. The report shall include a comprehensive and detailed report of the Corporation's operations, activities, financial condition, and accomplishments under this section and may include such recommendations as the Corporation deems appropriate. The officers and directors of the Corporation shall be available to testify before appropriate committees of the Congress with respect to such report, the report of any audit made by the Comptroller General pursuant to subsection 396(l), or any other matter which any such committee may determine.]

Report to Congress

(i)(1) *The Corporation shall submit an annual report for the preceding fiscal year ending September 30 to the President and the Congress on or before the 15th day of February of each year. The report shall include—*

(A) *a comprehensive and detailed report of the Corporation's operations, activities, financial condition, and accomplishments under this subpart and such recommendations as the Corporation deems appropriate;*

(B) *the plan required in paragraph (2) of this subsection; and*

(C) *the summary of the annual report provided to the Secretary of Health, Education, and Welfare pursuant to section 398(b)(4) of this subpart.*

(2) *The Corporation, in consultation with public telecommunications entities, and as appropriate with others, shall create a 5-year plan for the development of public television and radio services. Such plan, updated annually, and a summary of activities under such plan, shall be included in the report required in paragraph (1)(A) of this subsection.*

(3) *The officers and directors of the Corporation shall be available to testify before appropriate committees of the Congress with respect to such report, the report of any audit made by the Comptroller General pursuant to subsection (l) of this section, or any other matter which such committees may determine.*

(j) RIGHT TO REPEAL, ALTER, OR AMEND.—The right to repeal, alter, or amend this section at any time is expressly reserved.

[(k) FINANCING.—(1) There is authorized to be appropriated for expenses of the Corporation \$50,000,000 for the fiscal year ending June 30, 1974, and \$60,000,000 for the fiscal year ending June 30, 1975.

(2) In addition to the sums authorized to be appropriated by paragraph (1) of this subsection, there are authorized to be appropriated for payment to the Corporation for each fiscal year during the period July 1, 1970, to June 30, 1975, amounts equal to the amount of total grants, donations, bequests, or other contributions (including money and the fair market value of any property) from non-Federal sources received by the Corporation under section 396(g)(2)(A) of this Act during such fiscal year; except that the amount appropriated pursuant to this paragraph for any fiscal year may not exceed \$5,000,000.

(3) There is hereby established in the Treasury a fund which shall be known as the "Public Broadcasting Fund" administered by the Secretary of the Treasury. There are authorized to be appropriated to such fund for each of the fiscal years during the period beginning July 1, 1975, and ending September 30, 1980, an amount equal to 40 per centum of the total amount of non-Federal financial support received by public broadcasting entities during the fiscal year second preceding each such fiscal year, and for the period July 1, 1976, through September 30, 1976, an amount equal to 10 per centum of the total amount of non-Federal financial support received by public broadcasting entities during the fiscal year ending June 30, 1975; except that the amount so appropriated shall not exceed \$88,000,000 for the fiscal year ending June 30, 1976; \$22,000,000 for the period July 1, 1976, through September 30, 1976; \$103,000,000 for the fiscal year ending September 30, 1977; \$121,000,000 for the fiscal year ending September 30, 1978; \$140,000,000 for the fiscal year ending September 30, 1979; and \$160,000,000 for the fiscal year ending September 30, 1980.

(4) The funds authorized by this subsection shall be used solely for the expenses of the Corporation. The Corporation shall determine the amount of non-Federal financial support received by public broadcasting entities during each of the fiscal years indicated in paragraph (3) of this subsection for the purpose of determining the amount of each authorization, and shall certify such amount to the Secretary of the Treasury. Upon receipt of such certification, the Secretary of the Treasury shall disburse to the Corporation, from such funds as may be appropriated to the Public Broadcasting Fund, the amount authorized for each of the fiscal years and for the period July 1, 1976, through September 30, 1976, pursuant to the provisions of this subsection.

(5) The Corporation shall reserve for distribution among the licensees and permittees of noncommercial educational broadcasting stations that are on-the-air an amount equal to not less than 40 per centum of the funds disbursed to the Corporation from the Public Broadcasting Fund during the period July 1, 1975, through September 30, 1976, and in each fiscal year in which the amount disbursed is \$88,000,000 or more, but less than \$121,000,000; not less than 45 per centum in each fiscal year in which the amount disbursed is \$121,000,000 or more, but less than \$160,000,000; and not less than 50 per centum in each fiscal year in which the amount disbursed is \$160,000,000.

(6) The Corporation shall, after consultation with licensees and permittees of noncommercial educational broadcast stations that are on-the-air, establish, and review annually, criteria and conditions regarding the distribution of funds reserved pursuant to paragraph (5) of this subsection, as set forth below:

(A) The total amount of funds shall be divided into two portions, one to be distributed among radio stations, and one to be distributed among television stations. The Corporation shall make a basic grant from the portion reserved for television stations to each licensee and permittee of a noncommercial educational television station that is on-the-air. The balance of the portion reserved for television stations and the total portion reserved for radio stations shall be distributed to licensees and permittees of such stations in accordance with eli-

gibility criteria that promote the public interest in noncommercial educational broadcasting, and on the basis of a formula designed to—

(i) provide for the financial need and requirements of stations in relation to the communities and audiences such stations undertake to serve;

(ii) maintain existing, and stimulate new, sources of non-Federal financial support for stations by providing incentives for increases in such support; and

(iii) assure that each eligible licensee and permittee of a noncommercial educational radio station receives a basic grant.

(B) No distribution of funds pursuant to this subsection shall exceed, in any fiscal year, one-half of a licensee's or permittee's total non-Federal financial support during the fiscal year second preceding the fiscal year in which such distribution is made.

(7) Funds distributed pursuant to this subsection may be used at the discretion of stations for purposes related to the provision of educational television and radio programming, including but not limited to the following: producing, acquiring, broadcasting, or otherwise disseminating educational television or radio programs; procuring national or regional program distribution services that make educational television or radio programs available for broadcast or other dissemination at times chosen by stations; acquiring, replacing, and maintaining facilities, and real property used with facilities, for the production, broadcast, or other dissemination of educational television and radio programs; developing and using nonbroadcast communications technologies for educational television or radio programming purposes.]

Financing; Open Meetings and Financial Records

(k)(1)(A) *There is hereby established in the Treasury a fund which shall be known as the Public Broadcasting Fund (hereinafter in this subsection referred to as the "Fund"), to be administered by the Secretary of the Treasury.*

(B) *There is authorized to be appropriated to the Fund, for each of the fiscal years 1978, 1979, and 1980, an amount equal to 40 percent of the total amount of non-Federal financial support received by public broadcasting entities during the fiscal year second preceding each such fiscal year, except that the amount so appropriated shall not exceed \$121,000,000 for fiscal year 1978, \$140,000,000 for fiscal year 1979, and \$160,000,000 for fiscal year 1980.*

(C) *For each of the fiscal years 1981, 1982, and 1983, there is authorized to be appropriated to the Fund an amount equal to ⅓ of the total amount of non-Federal financial support received by public broadcasting entities during the fiscal year second preceding each such fiscal year, except that the amount so appropriated shall not exceed \$180,000,000 for fiscal year 1981, and \$200,000,000 for each of the fiscal years 1982 and 1983.*

(D) *Funds appropriated under this subsection shall remain available until expended.*

(2)(A) *The funds authorized to be appropriated by this subsection shall be used by the Corporation solely for its grants, contracts, and administrative costs. The Corporation shall determine the amount of non-Federal financial support received by public broadcasting entities during each of the fiscal years referred to in paragraph (1) of this subsection for the*

purpose of determining the amount of each authorization, and shall certify such amount to the Secretary of the Treasury, except that the Corporation may include in its certification non-Federal financial support received by a public broadcasting entity during its most recent fiscal year ending before September 30 of the year for which certification is made. Upon receipt of such certification, the Secretary of the Treasury shall make available to the Corporation, from such funds as may be appropriated to the Fund, the amount authorized for each of the fiscal years pursuant to the provisions of this subsection.

(B) Funds appropriated and made available under this subsection shall be disbursed by the Secretary of the Treasury on a quarterly basis, in such amounts as the Corporation certifies will be necessary to meet its financial obligations in the succeeding quarter.

(3)(A) The Corporation shall reserve for distribution among the licensees and permittees of public television and radio stations an amount equal to (i) not less than 40 percent of the funds disbursed by the Corporation from the Fund under this section in each fiscal year in which the amount disbursed is \$88,000,000 or more, but less than \$121,000,000; (ii) not less than 45 percent in each fiscal year in which the amount disbursed is \$121,000,000 or more, but less than \$160,000,000; and (iii) not less than 50 percent in each fiscal year in which the amount disbursed is \$160,000,000 or more.

(B) The Corporation shall establish an annual budget according to which it shall make grants for production or acquisition of public television or radio programs, for interconnection facilities and operations, and for distribution of funds among public telecommunications entities. All funds contained in such budget shall be distributed to entities outside the Corporation and shall not be used for the general administrative costs of the Corporation, the salaries or related expenses of Corporation personnel and members of the Board, or for expenses of consultants and advisers to the Corporation. During each of the fiscal years 1981, 1982, and 1983, such budget shall consist of not less than 95 percent of the funds made available by the Secretary of the Treasury to the Corporation pursuant to paragraph (2)(A) of this subsection.

(C) In fiscal year 1981, the Corporation may expend an amount equivalent to not more than 5 percent of the funds made available by the Secretary of the Treasury during such fiscal year pursuant to paragraph (2)(A) of this subsection for those activities authorized under subsection (g)(2) of this section which are not among those grant activities described in subparagraph (B) of this paragraph.

(D) In fiscal years 1982 and 1983, the amount which the Corporation may expend for activities authorized under subsection (g)(2) of this section which are not among those grant activities described in subparagraph (B) of this paragraph shall be 105 percent of the amount derived for the preceding fiscal year.

(4) Funds may not be distributed pursuant to this part to any public broadcasting entity or public telecommunications entity unless the governing board of any such entity holds open meetings preceded by reasonable notice to the public. All persons shall be permitted to attend any meeting of the Board, and no member of the public shall be required, as a condition to attendance at a meeting of a governing board, to register his or her name or to provide any other information. Nothing contained in this paragraph shall be construed to prevent the governing board from holding executive sessions to consider matters relating to personnel, proprietary

information, litigation and other matters requiring the confidential advice of counsel, or the purchase of property or services whenever the premature exposure thereof would compromise the business interests of any such entities.

(5) Funds may not be distributed pursuant to this part to any public broadcasting entity or public telecommunications entity that does not maintain for public examination copies of any annual financial and any audit reports submitted to the Corporation pursuant to subsection (l) (3) (B) of this section.

(6)(A) The Corporation, in consultation with public television and radio licensees, shall review annually its division of funds reserved pursuant to paragraph (3)(A) of this subsection, and the criteria and conditions regarding the division and distribution of such funds among public television and radio stations.

(B) The funds reserved for public broadcast stations pursuant to paragraph (3)(A) of this subsection shall be divided into two portions, one to be distributed among radio stations and one to be distributed among television stations. The Corporation shall make a basic grant from the portion reserved for television stations to each licensee and permittee of a public television station that is on the air. The balance of the portion reserved for television stations and the total portion reserved for radio stations shall be distributed to licensees and permittees of such stations in accordance with eligibility criteria that promote the public interest in public broadcasting, and on the basis of a formula designed to—

(i) provide for the financial needs and requirements of stations in relation to the communities and audiences such stations undertake to serve;

(ii) maintain existing, and stimulate new, sources of non-Federal financial support for stations by providing incentives for increases in such support; and

(iii) assure that each eligible licensee and permittee of a public radio station receives a basic grant.

(7) No distribution of funds pursuant to this subsection shall exceed, in any fiscal year, one-half of a licensee's or permittee's total non-Federal financial support during the fiscal year second preceding the fiscal year in which such distribution is made.

(8) Funds distributed pursuant to paragraph (3)(A) of this subsection shall be used at the discretion of the recipient for purposes relating to the provision of public television and radio programming, including, but not limited to—

(A) producing, acquiring, broadcasting, or otherwise disseminating public television or radio programs;

(B) procuring national or regional program distribution services that make public television or radio programs available for broadcast or other dissemination at times chosen by stations;

(C) acquiring, replacing, or maintaining facilities, and real property used with facilities, for the production, broadcast, or other dissemination of public television and radio programs; and

(D) developing and using nonbroadcast communications technologies for public television or radio programming purposes.

(1) RECORDS AND AUDIT. (1) * * * *

(2) * * * *

[(3) (A) Each recipient of assistance by grant or contract, other than a fixed price contract awarded pursuant to competitive bidding procedures, under this section shall keep such records as may be reasonably necessary to fully disclose the amount and the disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(B) The Corporation or any of its duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this section. The Comptroller General of the United States or any of his duly authorized representatives shall also have access thereto for such purpose during any fiscal year for which Federal funds are available to the Corporation.]

(3) (A) *Within 1 year after the date of enactment of this Act, the Comptroller General of the United States, in consultation with the Corporation and as appropriate with others, shall adopt accounting principles which shall be uniformly used by all public telecommunications entities receiving funds under this part. Such principles shall be designed to account fully for all funds received and expended for public telecommunications purposes by such entities. All financial information of such entities relating to such purposes, including all funds received by such entities from any private or governmental source, and all funds expended for any purpose, may be audited by the Comptroller General of the United States, who shall have access to all books, records, accounts, reports, and other materials of such entities.*

(B) *Each public broadcasting entity and public telecommunications entity receiving funds under this part shall be required—*

(i) to keep its books, records, and accounts in such form as may be required by the Corporation;

(ii) to undergo an annual audit by independent certified public accountants or independent licensed public accounts certified or licensed by a regulatory authority of a State, which audit shall be in accordance with auditing standards developed by the Comptroller General of the United States, in consultation with the Corporation; and

(iii) to furnish annually to the Corporation a copy of the audit report required pursuant to clause (ii), as well as such other information regarding finances as the Corporation may require.

(C) *Any recipient of assistance by grant or contract under this section, other than a fixed price contract awarded pursuant to competitive bidding procedures, shall keep such records as may be reasonably necessary to disclose fully the amount and the disposition by such recipient of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.*

(D) *The Comptroller General of the United States and the Corporation, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of any recipient of assistance that are related to assistance received under this section.*

SUBPART [C] D—GENERAL

[397. DEFINITIONS.—For the purposes of this part—

(1) The term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(2) The term “construction”, as applied to educational television broadcasting facilities or educational radio broadcasting facilities, means the acquisition and installation of transmission and reception apparatus (including towers, microwave equipment, boosters, translators, repeaters, mobile equipment, video recording equipment, non-video recording equipment, radio subcarrier receivers, and satellite transceivers) necessary for television broadcasting or radio broadcasting, as the case may be, including apparatus which may incidentally be used for transmitting closed circuit television or radio programs, but such term does not include the construction or repair of structures to house such apparatus. In the case of apparatus, the acquisition and installation of which is so included, such term also includes planning therefor.

(3) The term “Secretary” means the Secretary of Health, Education, and Welfare.

(4) The terms “State educational television agency” and “State educational radio agency” mean, with respect to television broadcasting and radio broadcasting, respectively, (A) a board or commission established by State law for the purpose of promoting such broadcasting within a State, (B) a board or commission appointed by the Governor of a State for such purpose if such appointment is not inconsistent with State law, or (C) a State officer or agency responsible for the supervision of public elementary or secondary education or public higher education within the State which has been designated by the Governor to assume responsibility for the promotion of such broadcasting; and, in the case of the District of Columbia, the term “Governor” means the Board of Commissioners of the District of Columbia and, in the case of the Trust Territory of the Pacific Islands, means the High Commissioner thereof.

(5) The term “nonprofit” as applied to any foundation, corporation, or association, means a foundation, corporation, or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(6) The term “Corporation” means the Corporation authorized to be established by subpart B of this part.

(7) The term “noncommercial educational broadcast station” means a television or radio broadcast station, which (A) under the rules and regulations of the Federal Communications Commission in effect on the date of enactment of the Public Broadcasting Act of 1967, is eligible to be licensed or is licensed by the Commission as a noncommercial educational radio or television broadcast station and which is owned and operated by a public agency or nonprofit private foundation, corporation, or association or (B) is owned and operated by a municipality and which transmits only noncommercial programs for educational purposes.

(8) The term "interconnection" means the use of microwave equipment, boosters, translators, repeaters, communication space satellites, or other apparatus or equipment for the transmission and distribution of television or radio programs to noncommercial educational television or radio broadcast stations.

(9) The term "educational television or radio programs" means programs which are primarily designed for educational or cultural purposes.

(10) The term "non-Federal financial support" means the total value of cash and the fair market value of property and services (except for personal services of volunteers) received—

(A) as gifts, grants, bequests, donations, or other contributions for the construction or operation of noncommercial educational broadcast stations, or for the production, acquisition, distribution, or dissemination of educational television or radio programs, and related activities, from any source other than (i) the United States or any agency or establishment thereof, or (ii) any public broadcasting entity; or

(B) as gifts, grants, donations, contributions, or payments from any State, any agency or political subdivision of a State, or any educational institution, for the construction or operation of noncommercial educational broadcast stations or for the production, acquisition, distribution, or dissemination of educational television or radio programs, or payments in exchange for services or materials respecting the provision of educational or instructional television or radio programs.

(11) The term "public broadcasting entity" means the Corporation, and licensee or permittee of a noncommercial educational broadcast station, or any nonprofit institution engaged primarily in the production, acquisition, distribution, or dissemination of educational television or radio programs.】

DEFINITIONS

Sec. 397. For the purposes of this part—

(1) *The term "construction", as applied to public telecommunications facilities, means acquisition (including acquisition by lease), installation, and modernization of public telecommunications facilities and planning and preparatory steps incidental thereto.*

(2) *The term "Corporation" means the Corporation for Public Broadcasting.*

(3) *The term "interconnection" means the use of microwave equipment, boosters, translators, repeaters, communication space satellites or other apparatus or equipment for the transmission and distribution of television or radio programs to public telecommunications entities.*

(4) *The term "interconnection system" means any system of interconnection facilities used for the distribution of programs to public telecommunications entities.*

(5) *The term "meeting" means the deliberations of at least the number of members of a governing body required to take action on behalf of such body where such deliberations determine or result in the joint conduct or disposition of the governing body's business, but only to the extent that such deliberations relate to public broadcasting.*

(6) The terms "noncommercial educational broadcast station" and "public broadcast station" mean a television or radio broadcast station which (A) under the rules and regulations of the Federal Communications Commission in effect on the date of the enactment of the Public Telecommunications Financing Act of 1978, is eligible to be licensed by the Commission as a noncommercial educational radio or television broadcast station and which is owned and operated by a public agency or nonprofit private foundation, corporation, or association; or (B) is owned and operated by a municipality and which transmits only noncommercial programs for educational purposes.

(7) The term "non-Federal financial support" means the total value of cash and the fair market value of property and services (except for personal services of volunteers) received—

(A) as gifts, grants, bequests, donations, or other contributions for the construction or operation of noncommercial educational broadcast stations, or for the production, acquisition, distribution, or dissemination of educational television or radio programs, and related activities, from any source other than (i) the United States or any agency or establishment thereof; or (ii) any public broadcasting entity; or

(B) as gifts, grants, donations, contributions, or payments from any State, or any educational institution, for the construction or operation of noncommercial educational broadcast stations or for the production, acquisition, distribution, or dissemination of educational television or radio programs, or payments in exchange for services or materials respecting the provisions of educational or instructional television or radio programs.

(8) The term "noncommercial telecommunications entity" means any enterprise which (A) is owned and operated by a State, a political or special purpose subdivision of a State, a public agency or nonprofit private foundation, corporation, or association; and (B) has been organized primarily for the purpose of disseminating audio or video noncommercial educational and cultural programs to the public by means other than a primary television or radio broadcast station, including, but not limited to, coaxial cable, optical fiber, broadcast translators, cassettes, discs, microwave, or laser transmission through the atmosphere.

(9) The term "nonprofit", as applied to any foundation, corporation, or association, means a foundation, corporation, or association, no part of the income or assets of which inures, or may lawfully inure, to the benefit of any officer or employee thereof, except as reasonable compensation for services.

(10) The term "pre-operational expenses" means all nonconstruction costs incurred by new telecommunications entities before the date on which they begin providing service to the public, and all nonconstruction costs associated with expansion of existing entities before the date on which such expanded capacity is activated, except that such expenses shall not include any portion of the salaries of any personnel employed by an operating broadcasting station or other telecommunications entity.

(11) The term "public broadcasting entity" means the Corporation, any licensee or permittee of a noncommercial educational broadcast station, or any nonprofit institution engaged in the production, acquisition, distribution, or dissemination of educational and cultural radio or television programs.

(12) The term "public telecommunications entity" means any enterprise which (A) is a public broadcasting station or a noncommercial telecommunications entity; and (B) disseminates noncommercial educational and cultural radio or television programs to the public.

(13) The term "public telecommunications facilities" means apparatus necessary for production, interconnection, captioning, broadcast, or other distribution of programming, including, without limitation, studio equipment, cameras, microphones, audio and video storage or reproduction equipment or both, signal processors and switchers, towers, antennas, transmitters, translators, microwave equipment, mobile equipment, satellite communications equipment, instructional television fixed service equipment, subsidiary communications authorization transmitting and receiving equipment, cable television equipment, video and audio cassettes and discs, optical fiber communications equipment, and other means of transmitting, emitting, storing, and receiving images and sounds, or intelligence, except that such term shall not include the buildings to house such apparatus, with the exception of small equipment shelters which are part of satellite Earth stations, translators, microwave interconnection facilities, and similar facilities.

(14) The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(15) The term "system of public telecommunications entities" means any combination of public telecommunications entities acting cooperatively to produce, acquire, or distribute programs, or to undertake related activities.

§ 398. FEDERAL INTERFERENCE OR CONTROL PROHIBITED.—Nothing contained in this part shall be deemed (1) to amend any other provision of, or requirement under this Act; or (2) to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over educational television or radio broadcasting, or over the Corporation or any of its grantees or contractors, or over the charter or bylaws of the Corporation, or over the curriculum, program of instruction, or personnel of any educational institution, school system, or educational broadcasting station or system.]

FEDERAL INTERFERENCE OR CONTROL PROHIBITED; EQUAL EMPLOYMENT OPPORTUNITY

SEC. 398. (a) Nothing contained in this part shall be deemed (1) to amend any other provision of, or requirement under, this Act; or (2) to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over public telecommunications, or over the Corporation or any of its grantees or contractors, or over the charter or bylaws of the Corporation, or over the curriculum, program of instruction, or personnel of any educational institution, school system, or public telecommunications entity.

(b)(1) Equal opportunity in employment shall be afforded to all qualified persons by all telecommunications entities receiving funds pursuant to subpart C of this part (hereinafter in this subsection referred to as "recipients"), and no person shall be subjected to discrimination in employment by any such recipient on the grounds of race, color, religion, national origin, or sex.

(2)(A) *The Secretary of Health, Education, and Welfare is authorized and directed to enforce this subsection and to prescribe such rules and regulations as may be necessary to carry out the Secretary's functions under this subsection.*

(B) *The Secretary shall provide for close coordination with the Commission in the administration of the Secretary's responsibilities under this section which are of interest to or affect the functions of the Commission so that, to the maximum extent possible consistent with the enforcement responsibilities of each, the reporting requirements of public broadcast licensees shall be uniformly based upon consistent definitions and categories of information.*

(3) *The Corporation shall incorporate into each grant agreement or contract with any recipient entered into on or after the effective date of the rules and regulations prescribed by the Secretary of Health, Education, and Welfare pursuant to paragraph (2), a statement indicating that, as a material part of the terms and conditions of the grant agreement or contract, the recipient will comply with the provisions of paragraph (1) and the rules and regulations prescribed pursuant to paragraph (2). Each recipient shall provide to the Corporation any information that the Corporation may require.*

(4) *The Corporation shall provide an annual report for the preceding fiscal year ending September 30 to the Secretary of Health, Education, and Welfare on or before the 15th day of February of each year. The report shall contain information in the form required by the Secretary. The Corporation shall submit a summary of such report to the President and the Congress as part of the report required in section 396(i) of this part. The Corporation shall provide other information in the form which the Secretary may require in order to carry out the Secretary's functions under this subsection.*

(5) *Whenever the Secretary of Health, Education, and Welfare makes a final determination, pursuant to the rules and regulations which the Secretary shall prescribe, that a recipient is not in compliance with paragraph (1) of this subsection, the Secretary shall inform the Corporation of such determination, including any order to reduce or suspend any further payments of funds under this part to the recipient and the Corporation shall thereupon so reduce or suspend such payments. Resumption of payments shall take place only when the Secretary certifies to the Corporation that the recipient has entered into a compliance agreement approved by the Secretary. A recipient whose funds have been reduced or suspended may apply at any time to the Secretary for such certification.*

(6) *The provisions of paragraphs (2), (3), (4), and (5) of this subsection shall not apply to any recipient having less than five full-time employees.*

(c) *Nothing in this section shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the content or distribution of public telecommunications programs and services, or over the curriculum or program of instruction of any educational institution or school system.*

SEC. 399. * * * *

